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CONDEMNED CANNON FOR PEABODY, MASS., AND INDIAN-
APOLIS, IND.

JULY 14, 1882.—Committed to the Committee of the Whole House on the state of the
Union and ordered to be printed.

Mr. SPAULDING, from the Committee on Military Affairs, submitted the
following

REPORT:

[To accompany bill H. R. 6695.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 6695) granting condemned cannon for monumental purposes, having considered the same, respectfully report the bill back to the House without amendment, and recommend its passage.

○

CONDEMNED CANNON FOR HAVERSTRAW, N. Y.

JULY 14, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. SPAULDING, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6721.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 6721) granting condemned cannon and balls for memorial purposes, having considered the same, respectfully report the bill back to the House without amendment, and recommend its passage.



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MARTHA J. DOUGLAS.

JULY 14, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SIMONTON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5985.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5985) granting a pension to Martha Jane Douglas, having considered the same, report as follows:

Martha Jane Douglas filed an application for pension at the Pension Office on the 21st day of February, 1876, alleging that she is the widow of John T. Douglas, who enlisted at Corinth, Miss., July 6, 1863, in Company B, Third West Tennessee Cavalry, and who was captured by the enemy at Como, in the State of Tennessee, in an engagement on the 7th day of October, 1863, and died February 25, 1864, while a prisoner of war at Danville, Va.

The Adjutant-General of the United States Army has no record of such an organization as the Third West Tennessee Cavalry.

William H. Cariness testifies that he was a surgeon in Company C of the Seventh Tennessee Cavalry; was at Corinth, Miss., July 6, 1863, and saw John T. Douglas sworn into the United States service in Company B, Second West Tennessee Cavalry. Drew arms and clothing from United States Government, and on the 7th of October, 1863, at Como, Tenn., in an engagement with the Confederates, Douglas and the affiant, with others, were captured and sent to Danville, Va., where said Douglas was taken sick. Affiant was with him in his sickness up to the 14th February, 1864, when he (Douglas) was moved back to the main building, where, as he was informed subsequently by a nurse, he died on the 25th of February, 1864.

The company and regiment to which Douglass belonged was so completely broken up by the defeat at Como that it was never fully reorganized, and the men were distributed and assigned to other companies and regiments. Affiant was assigned to company and regiment aforesaid, and mustered in from the 6th day of July, 1863, the date on which himself and Douglas originally enlisted.

N. V. Wilson makes oath that he was present at Corinth, Miss., July 6, 1863, when said Douglas was sworn into Company B, *Second* West Tennessee Cavalry; was also present in engagement at Como when he was captured, and saw him taken off as a prisoner. Affiant never saw him afterwards, but was informed by some one that he died in a Confederate hospital, February, 1864. Affiant enlisted with Douglas, and was afterwards assigned to Company A, Seventh Tennessee Cavalry.

The Surgeon General reports that the Confederate hospital records of Danville, Va., show that private J. F. Douglas, Company B, Third Tennessee Cavalry, died at said hospital February 26, 1864, of chronic diarrhea.

The claim has been rejected by the Pension Office because there is no record evidence of the soldier's enlistment, and the Adjutant-General has declined to make a record of the services upon the evidence presented.

In view of these facts the committee report the accompanying bill, with the recommendation that it do pass with the following amendment: Add at the end of the bill, "To take effect from the passage of this act."

EMILY THEADGILL.

JUNE 14, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SIMONTON, from the Committee on Invalid Pensions, submitted the following

R E P O R T .

[To accompany bill H. R. 5986.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5986) granting a pension to Emily Theadgill, having had the same under consideration, report as follows :

In application filed in Pension Office September 1, 1876, the claimant alleges that she is the widow of Nathaniel Theadgill, who was recruited for the Third West Tennessee on or about October 1, 1863, and died a prisoner of war at Danville, Va., on the 26th day of April, 1864.

In support of her allegation she filed the affidavit of M. V. Wilson, who testifies that he was a private in Company A, Seventh Tennessee Cavalry, and was acquainted with Nathaniel Theadgill, who enlisted in Company B, Third West Tennessee Cavalry, about October 1, 1863. The company and regiment were recruited and organized by orders from General Dodge, then commanding the United States forces at Corinth, Miss. Said Company B and parts of other companies intended to form said regiment left Corinth, armed and equipped, about the last days of September, 1863, under the command of a United States officer, to further recruit and complete the regiment, and while out on its recruiting expedition said Nathaniel Theadgill there recruited. Affiant was of the command. On the 7th of October, 1863, the command was attacked at Como, Tenn., by an overwhelming force of Confederates, the entire force routed, killed, or captured, affiant and said Theadgill among the latter. They were taken to Danville, Va., where both of them were stricken with small-pox and sent to hospital. Theadgill died by the side of affiant, of small-pox, on the 26th day of April. Affiant was finally exchanged, and having learned that the company and regiment in which he originally enlisted had been completely broken up by the defeat at Como, he attached himself to Company A, Seventh Tennessee Cavalry, in which company he was mustered to date from July 1, the date on which he had enlisted in Company B, Third West Tennessee Cavalry.

William H. Cariness, sergeant of Company C, Seventh Tennessee Cavalry, testified likewise to Theadgill's enlistment, capture, and death in Danville hospital of small-pox.

The Adjutant-General of the United States Army reports that no such organization as the Third West Tennessee Cavalry is known in his office. It does not appear from the papers submitted in this case by the Pension Office that an effort has been made to obtain a record of the Danville Confederate hospital relative to this case.

The claim has been rejected by the Pension Office, because there is no record evidence of the soldier's enlistment in the service of the United States, or death while a prisoner of war, as alleged.

In view of these facts, the committee report the accompanying bill, with the recommendation that it do pass, with the following amendment: Add, at the end of the bill, "To take effect from the passage of this act."

○

JORIAL ONKST.

JULY 14, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PETTIBONE, from the Committee on Invalid Pensions, submitted the following

R E P O R T:

[To accompany bill H. R. 6457.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 6457) granting a pension to Jorial Onkst, having had the same under consideration, would respectfully report:

Jorial Onkst enlisted as a private in Company F, Eighth Tennessee Cavalry, on the 31st day of May, 1863, and served until September 11, 1865, when he was discharged. He applied for a pension May 11, 1866, and again March 21, 1879, alleging in his declaration that he contracted chronic diarrhea at Strawberry Plains, Tenn., December 26, 1864, and piles at Sweet Water, Tenn., in August, 1864; and in December, 1864, while on a raid, his feet became badly frozen, causing great pain. His application was rejected by the department October 23, 1879, for the reason that there was "no ratable degree of disability since discharge." What is required to make out a case of "ratable degree of disability" your committee cannot say, but that claimant is clearly disabled and entitled to a pension is proven by the sworn affidavit of Dr. H. B. Hawk, who testifies that at time of enlistment claimant was an able-bodied man, and also that he has been his family physician since 1868, and has treated him yearly for piles and chronic diarrhea, and has prescribed treatment for his feet, which are badly affected from frost. Capt. Nelson McLaughlin, of claimant's company, testifies that at Strawberry Plains, Tenn., in December, 1864, claimant contracted chronic diarrhea, which reduced him very much; and also testifies that on a raid, in December, 1864, claimant's feet became badly frozen, and that on the Stoneman raid, in April, 1865, he was in bad condition of health, suffering with piles, diarrhea, and breast complaint.

Dr. C. Wheeler, assistant surgeon of the regiment, testifies to treating him for diarrhea and hemorrhoids, and during all his service he presented an unhealthy appearance; and he also testifies that claimant has been under his care since his discharge; and he further says that his knowledge of the facts is obtained from professional treatment.

In view of these facts, taken into consideration with all the evidence examined by your committee, they are of the opinion that Jorial Onkst is entitled to a pension. They therefore report back the accompanying bill and recommend that it do pass.

MARGERY NIGHTINGALE.

JULY 14, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PETTIBONE, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5103.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5103) granting a pension to Margery Nightingale, having had the same under consideration, respectfully report:

That Margery Nightingale, of Kilkenny, Le Sueur County, Minnesota, is the widow of Michael Nightingale, who enlisted and served in company D, Fifty-first Regiment New York Volunteer Infantry, under the name of James Dempsey.

That said Nightingale received a gunshot wound in his right arm at the battle of the Wilderness, May 6, 1864, which necessitated the amputation of said arm above the elbow, on account of which he was, at the time of his death, which occurred at Kilkenny, Le Sueur County, Minnesota, December 28, 1877, drawing a pension of \$24 per month.

The Committee find that the records of the Adjutant and Surgeon Generals of the United States Army clearly show that this pension was legally and justly due and granted said Nightingale, and that it appears from the testimony of his attending physicians that the soldier never recovered from the nervous shock and debilitation caused by the wound and amputation; that he was weakly and poor, compelled to overexert himself at labor to procure the necessities of life; that he was of exceptional good habits; that he gradually failed in health as a result of the loss of his arm and the resultant nervous affection, and that for some time previous to his death the stump of his arm was suppurating badly.

The testimony of his attending physicians shows that erysipelas was the immediate cause of his death, and that this disease and its fatal termination was the direct result of the loss of his arm and consequent debilitated physical and nervous condition of the soldier.

The committee therefore recommend the passage of the accompanying bill granting said widow a pension of \$8 per month, subject to the limitations and provisions of the pension laws, to take effect from and after the passage of this bill.

FRANCIS DUFFY.

JULY 14, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. J. B. RICE, from the Committee on Invalid Pensions, submitted the following

R E P O R T:

[To accompany bill H. R. 4582.]

The Committee on Invalid Pensions, to whom was referred the bill H. R. 4582, having had the same under consideration, respectfully report:

Francis Duffy is the father of Patrick Duffy, who was a private in Company E, Tenth Ohio Volunteer Infantry, he having enlisted June 4, 1861, and performed his duties faithfully until killed in action at the battle of Perryville, Ky., October 8, 1862.

The father, Francis Duffy, applied for a pension, and his application was rejected on the ground that he was not dependent upon his son for support at the time of the latter's death, although it was satisfactorily shown that the soldier sent a portion of his pay to his father after every pay-day.

The claimant is now seventy-five years old, and utterly destitute; and even if he may not have been wholly dependent upon his son at the date of the latter's death, he nevertheless received pecuniary aid from him, indicating that the son then believed the father needed such assistance and that he was willing to render it. By the death of this brave son in the front of battle the father lost the natural support of his declining years, and your committee believe he should receive the relief which is proposed in the bill, which is reported back with the recommendation that it do pass.

REUBEN MARSHALL.

JULY 14, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. JOHN B. RICE, from the Committee on Invalid Pensions, submitted the following

R E P O R T:

[To accompany bill H. R. 454.]

The Committee on Invalid Pensions, to whom was referred the bill H. R. 454, having considered the same, respectfully submit the following report:

The Bourbon County Guards, a military company organized in accordance with the laws of the State of Kansas, and of which Reuben Marshall was a private soldier, was called into active service by the governor of the State of Kansas on the 3d day of September, 1874, to repel an Indian invasion. The company was in active service on the 8th day of January, 1875, at which time the said Reuben Marshall, with other members of the company to which he belonged, acting under orders, conveying supplies to the command, was overtaken by a severe snow-storm, and was so badly frozen as to render necessary amputation of both legs above the ankle-joints and the index finger of his left hand.

The facts in the case are proved by trustworthy testimony, and your committee therefore beg leave to report back the accompanying bill with the recommendation that it do pass.

H. E. VAN TREES.

JULY 14, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. JOHN B. RICE, from the Committee on Invalid Pensions, submitted the following

R E P O R T:

[To accompany bill H. R. 452.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 452) granting a pension to H. E. Van Trees, having considered the same, respectfully submit the following report:

The Bourbon County Guards, a military company organized in accordance with the militia laws of the State of Kansas, and of which Harry E. Van Trees was a first lieutenant, was called into active service by the governor of the State of Kansas on the 3d day of September, 1874, to repel an Indian invasion. This company was in active service on the 8th day of January, 1875, at which time the said Van Trees was first lieutenant of said company, and, acting under orders, was engaged in carrying supplies required by the command. The men were overtaken in a violent snow-storm and Van Trees was so severely frozen as to necessitate the amputation of both his feet at the instep, rendering him a cripple for life.

Van Trees served during the war of the rebellion and won an excellent reputation for bravery and efficiency.

All the facts in the case are thoroughly proved, and your committee therefore beg leave to report back the accompanying bill, with the recommendation that it do pass.

BRIDGET HAMILTON.

JULY 14, 1832.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. JOHN B. RICE, from the Committee on Invalid Pensions, submitted the following

R E P O R T :

[To accompany bill H. R. 5034.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5034) granting a pension to Bridget Hamilton, having had the same under consideration, respectfully submit the following report :

Bridget Hamilton is the widow of Robert Hamilton, who served in the Army of the United States and the Marine Corps during a period of more than thirty years. He first enlisted in Company C, Third United States Artillery, for three years, and was discharged July 5, 1840. He re-enlisted July 10 for five years, and again in 1847 for during the war. He subsequently served twenty-four years in the Marine Corps. He enlisted nine times in the service of the United States, and at the expiration of each term received an honorable discharge. He performed his duties as a soldier faithfully in Florida, in the war with Mexico, and during the civil war. He was an accomplished drill sergeant, and during thirty years, under his teaching, thousands of soldiers were trained for active duty. Hamilton served as a sergeant throughout almost the entire period of his long service. The committee has been furnished with testimonials from officers under whose command he served, giving ample testimony to his excellent character and the faithfulness with which he performed his duties as a soldier.

His widow is now advanced in years, and is almost destitute of the means of obtaining a livelihood. They had four sons, three of whom served in the Union Army through the war of the rebellion. One has recently died of disease contracted in the service, leaving an orphan child, which is cared for by its grandmother, the widow of Robert Hamilton.

Your committee believe that a pension should be granted to Bridget Hamilton, and therefore report the bill back, with the recommendation that it do pass.

DENNIS SMITH.

JULY 14, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. J. B. RICE, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 388.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 388) granting a pension to Dennis Smith, have had the same under consideration, and beg leave to submit the following report:

It appears from the evidence that Dennis Smith was enrolled as a private in Company A, Sixth Regiment Kansas Volunteer Cavalry, on 23d April, 1862, and honorably discharged therefrom on 24th day April, 1865. That while in the service, and in the line of his duty at Old Fort Wagner, about the 20th October, 1862, he was on detached duty with a section of a battery belonging to his regiment which was on a scout near Rhea's mills, in the nighttime, and very dark—Smith being on a horse hitched to a caisson—his horse fell three several times and threw him violently to the ground each time, injuring him; his injuries resulting in umbilical hernia. That while his command was stationed at Crane Creek, near Springfield, Mo., in the month of January, 1863, and while in the line of his duty, he was severely afflicted with chronic diarrhea and neuralgia in the head and neck; that he has suffered from their effects continuously since that period, and that they are in his case incurable. That he was treated at general hospital, at Fort Smith, Ark., in the spring of 1865, for twelve weeks, and until he was mustered out the service. That he is a plasterer and mason by trade and wholly disabled from performing manual labor.

The above are allegations in his original declaration when he applied for pension at the Pension Office. His application for pension was rejected by the Pension Bureau because of the failure of the applicant to furnish the testimony of the surgeon who treated him while in the service.

There is in evidence an affidavit of the applicant stating that he is unable to furnish the evidence of either the surgeon or assistant surgeon of his regiment from the fact that both are dead.

There is in evidence the affidavit of Dr. H. S. Greno, who states that the applicant was at the time of his enrollment a man of sound physical constitution and free from the diseases mentioned above.

The affidavits of B. F. Yelton and W. H. Ward show that the applicant was sound, physically, at the time of his enlistment; that they were his comrades, and swear to the accident he mentions, and state the cir.

cumstances of the horse throwing him, and the facts of his attacks of diarrhea and neuralgia, as are stated in the original declaration.

Herron, in his affidavit, makes the same statement in regard to the accident when the horse threw Smith.

In evidence are the affidavits of H. Higginson and D. Clarke, who state that they have known Smith since his discharge from the service, and that to their personal knowledge he has suffered continuously from the diseases he mentions in his original declaration, and that he is almost wholly incapable of performing manual labor, and that his disability is permanent. The affidavit of S. B. Drisser shows that he was a comrade of Smith. He witnessed Smith's fall from the horse, and states that he learned from Dr. Redford, the regimental surgeon, that hernia resulted from the accident. He also says he has known Smith since his discharge; that he has suffered greatly from hernia, and has been unable to perform manual labor at least half the time.

The report of the Adjutant-General shows that Smith is reported as present with his command in the months of September and October, 1862, and that the records on file in said office furnish no evidence of hernia or disability.

The office of the Surgeon General shows that Smith was admitted to the general hospital, Little Rock, Ark., February 27, 1865, and treated for scurvy and returned to duty March 5, 1865. The records of general hospital at Fort Smith furnish no information in the case. The regimental surgeon's register is not on file at Surgeon-General's Office.

The certificate of A. Fuller, examining surgeon, states that in December, 1877, he examined the applicant and found him suffering from umbilical hernia, and also a ventral hernia and chronic diarrhea occurs irregularly, and that he has neuralgia once per month. He places the disability at three-fourths, or \$6 per month. He further certifies that from the evidence before him, he has every reason to believe Smith's disability originated in the service and in the line of his duty.

It is the opinion of the committee that the petitioner has exhibited an equitable claim to a pension, and we recommend the passage of the bill, amended, however, by striking out all after the word "cavalry" in line seven.

ANNIE W. OSBORNE.

JULY 14, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CABELL, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2966.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2966) granting a pension to Annie W. Osborne, widow of John W. Osborne, private Company E, Thirty-sixth Regiment Massachusetts Volunteers, have had the same under consideration, and make the following report:

The claimant, Annie W. Osborne, is the widow of John W. Osborne, who was mustered into the United States service August 27, 1862, as a private, Company E, Thirty-sixth Massachusetts Volunteer Regiment, and mustered out on the 19th of June, 1868. He re-enlisted June 22, 1868, and was stationed at the post hospital, Fort Ripley, Minnesota, from July 11, 1869, to October 28, 1870, when he died, having been accidentally shot under the following circumstances: Near the barracks at Fort Ripley there was a target, at which the officers and enlisted men stationed at said post practiced in firing with muskets and revolvers after guard-mounting and at other odd times; that on the 28th day of October, 1870, said Osborne and his brother were firing at said target, and, while so engaged, was fatally wounded, dying in a few hours after receiving the shot.

The claimant made application for a pension, which was rejected on the ground that the soldier was not in the line of duty when he received the shot which caused his death. Application was made to the Forty-fifth Congress for claimant's relief, which was favorably reported by the Committee on Invalid Pensions. The committee were of opinion that the soldier was in the line of duty at the time he was shot.

This committee, after considering the matter, and taking in consideration the long term of service of the soldier and the dependent condition of the claimant, with her three children, think it but just to grant the relief asked for. Therefore we report the bill back to the House, with the recommendation that it do pass, with amendment that the pension take effect from and after the passage of the act.

JACOB NIX.

JULY 14, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CABELL, from the Committee on Invalid Pensions, submitted the following

REPORT :

[To accompany bill H. R. 6740.]

The Committee on Invalid Pensions, to whom was submitted the joint resolution of the legislature of Minnesota, for the relief of Capt. Jacob Nix, of New Ulm, having had the same under consideration, report as follows :

Jacob Nix was a resident of Brown County, Minnesota, in 1862, and on the 18th of August of that year he was called into service as a major of militia by the sheriff of that county, to assist in repelling an attack of the Sioux Indians upon the town of New Ulm.

Under the military laws of Minnesota the sheriff had authority to call the militia into active service in such an emergency. A claim was filed by petitioner for pension June 11, 1866, alleging disability from wound in left arm and left hand received at New Ulm August 19, 1862. It appears that the claim was made under the ninth section of the supplementary pension act approved July 4, 1864, providing pensions for those persons who were not enlisted soldiers in the Army who volunteered for the time being to serve with any regularly organized military or naval force of the United States, or who otherwise volunteered to render service in any engagement with the rebels or Indians, who are disabled by wounds received in such temporary service.

The Pension Office rejected the claim on the ground that he was not a volunteer in the sense of the law, and therefore not entitled to a pension under the general law. Your committee are of opinion that he rendered good service, and at a time when his locality was sore in need of the service of a brave man; that he responded to the call and promptly entered into battle with the Indians, receiving the wounds alleged, and that he ought to be granted a pension, and therefore present the accompanying bill, and ask that it do pass.

M. H. CLEMENTS.

JULY 14, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. JOHN B. RICE, from the Committee on Invalid Pensions, submitted the following

R E P O R T :

[To accompany bill H. R. 447.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 447) granting a pension to M. H. Clements, submit the following report :

The Bourbon County Guards, a military company organized in accordance with the laws of the State of Kansas, and of which Milton H. Clements was a private, was called into active service by the governor of the State of Kansas on the 3d day of September, 1874, to repel an Indian invasion. This company was in active service on the 8th day of January, 1875, at which time the said Milton H. Clements, with other members of the command, was engaged in conveying supplies to the militia near New City, Kansas, and was overtaken by a snow-storm, and was frozen so severely as to render necessary the amputation of both legs above the ankle joints. All these facts are proved by reliable evidence, and the committee, therefore, beg leave to report back the accompanying bill with the recommendation that it do pass.

DUTY ON A CHIME OF BELLS FOR THE CHURCH OF THE
HOLY TRINITY, PHILADELPHIA, PA.

JULY 15, 1882.--Committed to the Committee of the Whole House on the state of the
Union and ordered to be printed.

Mr. KELLEY, from the Committee on Ways and Means, submitted the
following

R E P O R T :

[To accompany H. Res. 257.]

The Committee on Ways and Means, to whom was referred H. Res. 257, authorizing the remission or refunding of duty on a chime of bells for the church of the Holy Trinity, at Philadelphia, Pa., submit the following report :

The purpose of this bill is fully set forth in its title. A citizen of Philadelphia, noted for his public spirit and liberality toward religious, educational, and charitable institutions, has caused to be cast in Belgium a chime of 25 bells for the Episcopal Church of the Holy Trinity, of Philadelphia, the bells being intended as a memorial to the deceased wife of the doner. Congress has frequently passed bills for remission of duties in similar cases, and your committee therefore recommend the passage of the accompanying joint resolution.



DR. F. O. ST. CLAIR.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. KELLEY, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 5374.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 5374) to refund to Dr. F. O. St. Clair \$97.80, duties on a monument to the memory of Francis J. Townshend, late of the United States Navy, submit the following report:

Your committee, in recommending the passage of the accompanying bill, believe that a brief statement of the facts on which the claim is based will insure for it favorable action on the part of the House. Francis J. Townshend was an apothecary in the United States Navy, and while serving on the ship *Enterprise* in the Mediterranean Sea, died after a few hours sickness, and was buried at Port Mahon, Spain. Townshend was highly esteemed by the ship's company, and to mark their esteem a subscription, headed by Captain Selfridge, and followed by all the officers and men of the *Enterprise*, was raised, and a monument was ordered to be made at Naples, the purpose being to erect the same over the remains of Townshend at Port Mahon. Upon learning of Townshend's death, his relatives notified the committee having in charge the erection of a monument that it was their purpose to remove the remains to the United States as soon as this could be done under the laws of Spain, which require that a body shall remain buried two years before permission for removal can be obtained. The committee in charge of the monument, on learning the purpose of the relatives of their late shipmate, caused the monument to be shipped to them, and upon its arrival at New York Dr. F. O. St. Clair paid the United States customs officers \$97.80 for duties.

The bill provides for the refunding of that amount, and your committee recommend its passage.

HENRY HERMAN.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. KELLEY, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 6741.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 6741) for the relief of Henry Herman, having carefully considered the same, submit the following report:

The accompanying bill proposes to refund to Henry Herman, of the city of New York, the sum of \$2,451.54, that being the amount paid by him for duties erroneously assessed and collected on woolen goods imported by the firm of Herman & Co., of which firm Henry Herman was the senior partner, in April, 1867. The facts on which this claim for refund is based are these:

Messrs. Herman & Co. imported into the port of New York a certain lot of woolen goods, per steamer Manhattan, which arrived at that port on Saturday, March 2, 1867. An entry of these goods was made at the custom house March 4, 1867 (Monday), and the rate of duties stated in such entry was that imposed by the act of June 30, 1864, on such class of goods, but the entry was liquidated April 9, 1867, at the increased rates imposed by the act of March 2, 1867, entitled "An act to provide increased revenue from imported wool, and for other purposes."

Under date of May 23, 1867, Messrs. Herman & Co., by their attorneys, filed a protest against the exaction of duties under the act of March 2, 1867, on the ground that that act was not in force at the time the importation was made and until after the importers had duly entered and paid duties on their goods under the act of June 30, 1864. Due notice of the liquidation of the entry at the advanced rates was given the parties, but the protest not having been filed within ten days after liquidation of the entry, as required by section 15 of the act of June 30, 1864, the Treasury Department declined to entertain the appeal. The foregoing statement of facts in this case is taken from a letter of the Secretary of the Treasury, dated March 30, 1880.

The act of March 2, 1867, under which the increased duties were exacted, although purporting to have received executive approval on March 2, was in fact approved on Monday, March 4, as the records of Congress show, the legislative day beginning Saturday, March 2, having been extended to noon of Monday, March 4, when the Congress ex-

pired by limitation. The Secretary of the Treasury, in a letter reviewing this case, and dated March 30, 1880, says:

The following facts may be considered as established:

First, That the importation was complete on March 2, 1867.

Second, That the act bearing date March 2, 1867, was not approved until March 4, 1867, and therefore was not a law until that day; and,

Third, That therefore, as a matter of law, the goods in question were subject to duty under the act of June 30, 1864.

While there is no dispute as to the legal right of the goods to entry and liquidation under the lower rate of duties imposed by the act of June 30, 1864, it appears that in consequence of the failure of Messrs. Herman & Co. to file protest in due time the exaction of additional duties under the act of March 2, 1867, was insisted upon, and the amount of additional duties (\$2,451.54) was paid by them. Your committee are of opinion that the mere failure to enter protest within the time prescribed by law should not exclude these parties to the refund of excessive duties paid by them, particularly as it is admitted by the Secretary of the Treasury that the government had no legal claim to exact the increased duties imposed by the act of March 2, 1867. In reference to the failure to enter protest within the prescribed period, it appears that the business partner of Henry Herman, Jules B. de Mesquito, who attended to the custom-house business of the firm of Henry Herman & Co., was suffering from mental derangement when the importation in question was made, although this fact was not apparent to his business partner and friends at that time. Shortly thereafter de Mesquito committed suicide. These facts, in the opinion of your committee, should remove any technical obstacle that may exist touching the failure to enter protest within the period prescribed by the statute.

In view of the facts herein presented, your committee, after due consideration, report a substitute for the bill referred to them, and recommend its passage.

TAX ON PERIQUE TOBACCO.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. CARLISLE, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 5720.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 5720) to amend section 3362, Revised Statutes, relating to perique tobacco, submit the following report:

That, under the decisions of the Commissioner of Internal Revenue, perique tobacco, when put up in the form of carottes, is subject to the tax of 16 cents per pound imposed by law upon manufactured tobacco. This species of tobacco is grown only in a very small district lying in a curve of the Mississippi River, in the State of Louisiana, and by reason of its character it cannot be prepared for market so as to preserve its peculiar qualities without first taking out the stems and then putting it in the form of "carottes," as they are called. These "carottes" are simply very large and long packages of leaf twisted into a compact form and dried, so as to be ready for use by the manufacturers of cigarettes and smoking tobacco. This tobacco is too strong to be used by itself, but is mixed with other tobacco in order to give it the proper strength and flavor for smoking purposes. It is not a chewing tobacco.

The effect of the decision above referred to is to subject perique tobacco to a double tax; that is, it is taxed in the "carrottee," and again when it goes into the hands of the manufacturer of cigarettes and smoking tobacco. The bill reported simply exempts it from one tax, and leaves it to be taxed 16 cents per pound when manufactured, the same as all other kinds of tobacco.

PAYMENT OF CERTAIN JUDGMENTS.

JULY 15, 1882.—Laid on the table and ordered to be printed.

Mr. BRIGGS, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 3555.]

The Committee on the Judiciary, to whom was referred the bill H. R. 3555, having had the same under consideration, respectfully submit the following report:

The parties who advocate the passage of this bill appeared before the subcommittee and were given a full opportunity to be heard. Mr. Burwell, of counsel, submitted a written brief to the committee, to which brief were annexed House bill No. 2062, Forty-sixth Congress, and House bill No. 7252 of the same Congress. The bill first mentioned, viz, No. 2062, is in exactly the same language as the present bill (H. R. 3555), except the interlineation of the word "interest," and one or two slight verbal alterations, not materially changing the scope of said bill. These papers were all submitted to the Treasury Department for their opinion thereon, and the communication from the Commissioner of Internal Revenue, Hon. Green B. Raum, which we hereto annex and make a part of this report, satisfies your committee that the evils complained of are more imaginary than real; that there is no necessity for the proposed legislation; and they therefore report said bill to the House with the recommendation that it do not pass.

TREASURY DEPARTMENT, *March 31, 1882.*

SIR: In reply to your communication of the 10th instant, inclosing bill H. R. 7252, "to amend and re-enact section 3220 of the Revised Statutes of the United States so as to provide for the payment of judgments obtained under it as judgments of the Court of Claims are now paid," and requesting the opinion of this department as to the existence of the evils complained of in the brief of Mr. W. P. Burwell annexed thereto, and as to the necessity for the legislation asked for, I have the honor to forward herewith a copy of a letter of the Commissioner of Internal Revenue, dated the 22d instant, and inclosures, which contains an expression of his views relative to the necessity for additional legislation.

The inclosures of your communication are herewith returned.

Very respectfully,

H. F. FRENCH,
Acting Secretary.

Hon. J. F. BRIGGS,
Chairman Subcommittee on the Judiciary, House of Representatives.

TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
Washington, March 22, 1882.

SIR: I am in receipt of the letter of the 10th instant from Hon. J. F. Briggs, chairman of subcommittee of the Committee on the Judiciary, House of Representatives,

inclosing a copy of House bill No. 2062, Forty-sixth Congress, entitled "A bill to amend and re-enact section 3220 of the Revised Statutes of the United States, so as to provide for the payment of judgments obtained under it as judgments of the Court of Claims are now paid"; also a copy of House bill No. 7252, Forty-sixth Congress, having the same title, being a substitute for the above named, and a brief signed by W. P. Burwell. Mr. Briggs asks for the opinion of the department as to the existence of the evils complained of in Mr. Burwell's brief, and as to the necessity for the legislation asked for. You refer the papers to me for my views. I understand the main object of the bill to be to make judgments which are payable under section 3220, Revised Statutes, out of the Treasury of the United States, payable on application made directly to the Secretary of the Treasury, without first passing through the Internal Revenue Office. The evils complained of in Mr. Burwell's brief appear to be two in number: first, that judgment creditors are obliged to present their claims on a form (No. 46) provided by the Internal Revenue Office; and, second, that the claims are subject to "revision" in the Internal Revenue Office.

Under existing laws, judgments recovered against a collector or a deputy collector for internal taxes collected by him, or for damages recovered against him by reason of anything done in the due performance of his official duty, are paid by the Commissioner of Internal Revenue under regulations prescribed by the Secretary of the Treasury. The authority for such payments is conferred by section 3220, United States Revised Statutes.

The regulation prescribed by the Secretary is to be found upon page 18 of series 7, No. 14, a copy of which is herewith inclosed. Claims for the payments of such judgments are made on Form 46, a copy of which is also inclosed. They are made upon this form for the sake of uniformity and convenience. The work of preparing such a claim is very slight, as will be readily seen upon reading the regulation. The time occupied in the preparation of one would not ordinarily exceed ten minutes. Such a preparation can hardly be considered onerous; but if it is, all that is necessary to give the desired relief is a change of the regulations—no legislation is needed. It needs no argument to show that the preparation of the claim on Form 46 involves no revision of the judgment.

This office has never revised the judgment of a court, nor has it claimed a right to do so. If a judgment is for a certain specified amount, that amount is allowed and paid with all due promptitude. It sometimes happens, however, that a judgment, instead of being for a sum certain, is so rendered as to make computations necessary to the determination of the amount to be paid. In such cases these computations are made not only in this office, but by the accounting officers of the Treasury.

The courts have made certain decisions concerning the liability of the United States to the payment of interest on judgments recovered against its officers where certificates of probable cause have been given as provided in section 989 of the United States Revised Statutes. (See *United States vs. Sherman*, 98 United States Reports, 565, and *White et als. vs. Arthur*, 10 Federal Reporter, 80; see, also, decision of the First Comptroller of the Treasury in *Stephani's case*, 26 Internal Revenue Record, 313.) The doctrine of those decisions is applied to claims allowed in this office wherever it is found to be applicable.

In the case of Burgess, collector, *vs. Salmon & Hancock*, to which reference is made in Mr. Burwell's brief, the full amount of the judgment and costs was promptly paid, with interest. There was no revision, or attempted revision, of the judgment, unless the mode of presenting and allowing it, to wit, on Form 46, was a revision, and that no one, I presume, would seriously assert.

In my opinion no further legislation is necessary for the prompt allowance of claims like those above named, nor for their prompt payment, provided the money for their payment shall be appropriated by Congress.

It has been decided by the First Comptroller of the Treasury that judgments for damages against collectors of internal revenue cannot be paid from the appropriation for the refunding of taxes illegally collected.

The copy of the bill inclosed by you is so interlined as to require the payment of interest on certain claims against the government upon which interest is not now payable. As a general rule the United States does not pay interest upon claims. If Congress should decide to allow interest, as contemplated by the bill, the allowance should, in my opinion, be so guarded that a claimant shall not be paid interest for the time during which payment was delayed by his own negligence in presenting his claim.

Mr. Briggs's letter, together with the inclosures therein, is herewith returned.

I am, very respectfully, your obedient servant,

GREEN B. RAUM,
Commissioner.

HON. CHARLES J. FOLGER,
Secretary of the Treasury.

J. AND R. H. PORTER.

JULY 15, 1882.—Laid on the table and ordered to be printed.

Mr. PAYSON, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill S. 905.]

The Committee on the Judiciary, to whom was referred the bill (S. 905) for the relief of J. and R. H. Porter, having had the same under consideration, would respectfully report:

The bill comes to the House, after having passed the Senate, as a substitute for a bill originally introduced in that body, proposing to allow the claimants, the Porters, to go to the Court of Claims and make proof in support of their claim against the United States. Instead of recommending the passage of the bill, the Senate Committee on Claims, having it in charge, reported back a substitute making an appropriation of \$9,350 to the Porters, with a favorable recommendation; this substitute passed, and is the bill before us.

An explanation may be due for the apparent length of this report. This claim is one of three, growing out of the same transaction, all of which are still being pressed in some form against the government. One is the claim of J. C. Irwin for \$25,200; another of C. A. Perry & Co., for \$57,650; and this one, originally for \$30,000, but now reduced to \$9,350.

On the merits, the claims are identical, the only difference being in the fact that different department action has been had in the Porter case, and as later action in this case has been based on an entire ignorance of important facts, or on an erroneous assumption of prior action, your committee have thought it proper to state, at length, the history of the case, so that if action should not be had by this Congress upon them, and they should be called up in the future, the facts, ascertained by a great deal of labor, may be accessible in this report; especially as the matters are important, and have been vigorously and persistently pressed, as will be seen, almost yearly, since 1861, with constant adverse decisions, until the Senate committee, on a legal proposition as to the effect of an action of the Third Auditor in 1861, held that it should be paid.

If the government owes one of these claims it owes all of them, and if one is paid all should be, without regard to technical questions as such.

As we differ with the Senate committee absolutely, not only as to the law of the case, but as to the facts regarded as controlling, as expressed in the Senate committee's report, and on which report the bill before us seems, by the Record, to have passed the Senate without objection or discussion, we present a detailed statement of facts and their verification,

out of which the cases have arisen, as well as details of departmental action, which the Senate committee regard as conclusive on the government, irrespective of the actual merits of the claims of Porter, supplying what has been omitted by that committee.

On August 13, 1857, a train, consisting of 25 wagons, 337 oxen, 12 mules, and 3 horses, owned by the Porters, who were at that time engaged as freighters or carriers of merchandise from the Missouri River to Utah Territory, left Atchison, Kans., for Salt Lake, Utah.

The contract for the freight with which Porter's train was loaded was made by Porter on June 19, 1857.

As will be remembered, in the spring of 1857 opposition toward the Government of the United States began to be openly manifested by the Mormons in Utah, and, owing to avowed resistance on their part to the authority of certain Federal officers, it was deemed advisable by the President to send a military force to that Territory. By the records of the War Department it appears that the fitting out of the expedition against the Mormons (which was commanded by Col. Albert Sidney Johnston, and to whom Fitz John Porter was adjutant), became and was a matter of general notoriety about June 1, 1857, in the valley of the Missouri, as orders had been sent to the staff departments at Saint Louis and Fort Leavenworth to fit it out. The facts of the Mormons being then in armed resistance to the authority of the United States and the fitting out of this expedition were well known at Leavenworth, from which point Perry's train was started, and Atchison, near there, long before the train started, and, indeed, when the contracts for the freighting were made by Porter (Perry & Co. carrying their own goods), and when these trains left the Missouri River, in August, 1857, the Mormon rebellion was a matter of current discussion. The trains proceeded westward, and from the files at the War Department these facts are gleaned. The positions and dates are regarded as important for reasons which will be noticed later.

Col. A. S. Johnston, in command, made a formal report to Adjutant-General Cooper, at Washington, D. C., under date of August 30, 1858, in which he says:

I have the honor to state, for the information of the Secretary of War, that Messrs. J. C. Irwin and J. and R. H. Porter, owners and conductors of trains loaded with merchandise for Livingston & Kincaid, merchants, of Great Salt Lake City, Utah, *arrived at their camp near Rocky Ridge, about 30 miles east of the South Pass, early in October. I suppose, from the best information I can obtain, about the 8th or 9th.*

They were then progressing well and making their usual marches. *At that place the news reached them of the burning of three government trains, on and within the borders of Utah, then in advance, on the march to establish posts in Salt Lake Valley.*

Apprehending a like fate for their trains if they entered Utah, they did not doubt it was their duty to halt for security.

This act of war against the government, authorized and ordered by Brigham Young, then governor of Utah, taken in connection with his proclamation dated September 15, 1857, which prohibited all persons from entering the Territory (the proclamation containing this clause: "Third. Martial law is hereby declared to exist in this Territory from and after the publication of this proclamation, and no person shall be allowed to pass or repass into or through or from this Territory without a permit from the proper officer"), and the movement of armed bodies of citizens of the Territory obedient to his (Governor Young's) orders, *leaves no room to doubt that the halt was an imperious necessity and wholly unavoidable.* Mr. Irwin, experienced and skilled in the conducting of trains on this route, would not at that late period of the year have delayed his march an hour *unless obliged to do so.*

We subsequently encamped near Col. C. F. Smith, who had taken a position, with 50 men of the Tenth Infantry, to await the concentration of the government trains, and give all the protection in his power to them and the others.

On my arrival, on the 15th of October, in the vicinity of Colonel Smith's camp, I ordered him to advance to the South Pass and await the arrival of a squadron of the Second Dragoons and a detachment of the Tenth Infantry * * *.

The trains of Irwin, Porter, and Perry & Co. followed the movements of Colonel

Smith, and encamped on the 17th October, 2½ miles from the South Pass, on the Sweet Water.

Nine days elapsed before the arrival of the government trains, loaded with supplies for the army, and the dragoons and infantry for their safe escort. The march then commenced, on October 26, to join the army, 90 miles in advance. It was this march, over a desert country, and subsequently amidst storms of snow and intense cold, that destroyed the animals of Porter's and Perry's trains and others, and of the army as well, much more than the order of march, which no doubt contributed its share; but was unavoidable on account of the great length of the trains and the smallness of the force.

The rebellion of the Mormons produced the delay of Irwin's and Porter's trains on the Sweetwater, and their losses were a direct consequence of the delay.

It was not possible for them to have accomplished the journey after their arrival at the South Pass; if the road had been open, the season was too far advanced. The animals could have been wintered east of the Sweetwater, and thereby have saved the destructive effects of the climate; but with the active spirit of hostility then rife among the Mormons, he could have no hope of remaining undisturbed, and was therefore compelled to accompany the troops for protection.

My order of October 19 was addressed particularly to the owners of private trains at that camp, but was intended for the government of all persons whatsoever.

Regarding the Mormons in actual rebellion, I could not doubt it was my duty, as a first measure, * * * to stop all intercourse with them, and to prevent them from receiving aid and assistance from any quarter. In view of this position, I issued the prohibitory order of October 19 of last year.

This order is as follows:

HEADQUARTERS ARMY OF UTAH,
South Pass, en route to Salt Lake City, October 19, 1857.

SIR: The colonel commanding directs me to inform you, in reply to your letter of to-day, that no goods or supplies of any kind will be permitted to pass the Army for Salt Lake City or any other point in possession of the Mormons, nor any communication whatever to be had with them so long as they manifest a hostile attitude to the Government of the United States.

F. J. PORTER,
Assistant Adjutant-General.

To J. C. IRWIN.

This order, it will be observed, was issued about ten days after these merchant trains had placed themselves voluntarily with the troops for protection, and while the column was on the march toward Salt Lake City. As these dates were regarded as specially important, in view of subsequent departmental, as well as Senatorial, action in the case, it should be kept in mind that the first connection of these trains with the troops was at Rocky Ridge, 30 miles east of South Pass, and about October 8 or 9. Thence all moved westwardly, and on the 17th encamped on the Sweetwater, 2½ miles east of South Pass, where the troops, under orders from Colonel Johnston, of date October 15, 1857, awaited the arrival of the Second Dragoons and a detachment of the Tenth Infantry, which had been ordered from Fort Laramie, and these troops were deemed necessary for the "safe escort of the trains."

It was October 26 before all the necessary arrangements could be made for the march West, and, evidently in response to a letter of inquiry from Mr. Irwin, the letter, or "order," as it is called, of the 19th was written by Adjutant-General Porter.

Preliminary to the starting of the expedition from South Pass, an order of marching was issued by Colonel Smith, dated October 24, 1857, which has been deemed important by some of the department officers, as bearing on the question of the liability of the United States, and hence it is inserted here.

[Orders No. 36.]

HEADQUARTERS BATTALION TENTH INFANTRY,
Camp near South Pass, Utah Territory, October 24, 1857.

- I. The following will be the position of the trains during the march from this point:
 1. Headquarters of the Army.
 2. Infantry battalion.

3. Volunteers.
4. Squadron of dragoons.
5. Supply train in charge of Mr. Rice.
6. Supply train in charge of Mr. Goodwin.
7. Supply train in charge of Mr. Harper.
8. Supply train in charge of Mr. Shepherd.
9. Sutler's Fifth Infantry.
10. Sutler's Tenth Infantry.
11. Sutler's Second Dragoons.
12. Gilbert & Gerrish.

II. On arriving in camp each train will be parked in the usual manner; the ox-trains about 60 yards from each other—they forming the three or four sides of a rectangle—as may be convenient.

III. The following will be the disposition of the troops during the march:

The infantry guarding in rear of its train.

The volunteers guarding in rear of its train.

The dragoons guarding in rear of its train.

Company D, Tenth Infantry, opposite supply train No. 2.

Volunteers opposite supply train No. 4.

Company A, Tenth Infantry, opposite Sutler's Tenth Infantry.

The remainder of the mounted force will march in front and in the rear of the whole train, the companies alternating.

IV. In case of attack, the teamsters are expected to stand to their wagons and use their fire-arms from them.

By order of Brevet Colonel Smith.

J. Mc NAB,

First Lieutenant Tenth Infantry, Acting Adjutant.

It is proper to note in this connection that the order of October 19 only prohibits goods and supplies *passing* the Army for Salt Lake City or any point in possession of the Mormons, or any communication to be had with them so long as they manifested hostility to the government. There was no intimation that the merchant train might not return or make such arrangements as to wintering as they desired.

The idea of Colonel Johnston may be best gathered from a letter he addressed to Mr. Porter, May 30, 1866, in which he says as to the order of October 19, 1857:

In view of the hostile spirit manifested by the Mormons, I conceived it to be my duty to prevent all intercourse with them by which they could receive information, aid, or comfort in any form. * * *

This order, coupled with the instructions given to the conductors of the merchant trains as to the position and conduct of the column on the march, shows clearly that it had for its object to prevent those trains from falling into the hands of the enemy. * * *

While there was no desire to take the property out of the hands of the owners or carriers, no measures could have been intermitted to prevent the property from falling into the hands of the Mormons.

On November 5, 1857, Colonel Johnston made a report to the War Department from his headquarters on Harris' Fork, Utah, *en route* to Salt Lake City, in which he says:

I have the honor to inform you that I arrived here on the 3d instant. This place I designated in a communication to Colonel Alexander, subsequent to my letter to you from the South Pass of the 18th of October, at which the force, consisting of 1 squadron of dragoons, 2 companies of the Tenth Infantry, and 1 company of volunteers, in all about 300 men, under the command of Col. C. F. Smith, charged with the duty of protecting the trains of supplies for the Army, could with the most facility join the main body. *Colonel Smith, with his command and the numerous trains guarded by it, reached here on the 3d instant. * * * No molestation whatever was attempted by the Mormons, which may be attributed to the presence of the cavalry and the judicious disposition and vigilance of Colonel Smith.*

That the acts of the Mormons in destroying the trains on Green River early in October were proclaimed appears by a report of Col. E.

B. Alexander to the War Department, dated Camp Winfield, Utah, October 9, 1857 (Ex. Doc. No. 2, pt. 2, p. 29, first session Thirty-fifth Congress), in which he states that on the 5th the Mormons destroyed two trains on Green River and one on the Big Sandy, and a few sutlers' wagons behind the latter train. He says:

No doubt exists of the most determined hostility on the part of the Mormons. * * * There are several supply trains in the rear, to which I have communicated, and if they receive my letter in time they will be saved, and can join us.

This information was that which reached the trains at Rocky Ridge on the 8th, where Colonel Smith gave the desired protection to the trains there.

All the accounts of the march from Rocky Ridge to Fort Scott, about 112 miles, agree that the weather was most severe—cold, storm, and snow, a severe winter thus early, even for that high latitude—and that very many of the animals died for want of forage and from exhaustion.

In the evidence submitted by the claimants it is frequently asserted in general terms that during the march the cattle of claimants were used indiscriminately with those of the quartermasters for hauling, &c., &c., and that they were indiscriminately mixed with the government cattle.

For the government, it is stated positively by Capt. H. F. Clark that the government herds were kept separate from all other herds, and if by accident any of either did mix, they were promptly separated.

The government proofs also show that if by accident any cattle belonging to individuals were accidentally slaughtered for the Army, "other cattle as good were at once given in exchange, or the cattle paid for." (See report of Third Auditor Wilson, of July 8, 1865.)

The claim is also made by Porter that during the march the teams were used indiscriminately to haul the wagons of the government as well as the freighters, and in the general statements of witnesses for the claimants this would appear to be so; but details of these acts are given by the officers, that as the merchants' trains were in the *rear* of the column, and their animals exhausted, frequently the government teams would be sent back to *double* and help up the merchants' trains.

A careful examination of the whole record, voluminous as it is, fails to show that a single animal of the merchant trains was used in the hauling of the government wagons; but it clearly shows that government teams were often worked with private teams, but always on the freighters' wagons, and only in the spirit of mutual assistance, to help them forward, and the proofs are overwhelming that without such aid those merchant trains would have had to be abandoned.

On the arrival of the column at Camp Scott (Fort Bridger), early in November, where the force was to winter, as the season was so far advanced that further progress was impossible, the animals of the Porters remaining were sold by them, and the goods being freighted remained till spring, when they were carried forward to Salt Lake City, their destination.

These are believed to be all the material facts on the merits of the claim.

In all the cases—Irwin's, Porter's, and Perry & Co.'s—claim was made under the act of 1849 for the value of the entire trains severally, the parties insisting that the so called order of October 19, 1857, of Colonel Johnston by Fitz John Porter, was in legal effect an *impressment* of their trains, and the government liable to pay the entire value thereof, relying on *Harmony vs. Mitchell* (13 Howard, 115).

In Porter's case the claim was for over \$30,000, the value of the en-

tire train. Although he had sold a large proportion of it and received the money, the case was made up and all the papers filed with the Third Auditor under the statute for adjudication.

On examination of the cases he decided against Porter's, but on the solicitation of the claimants the papers were sent to the Attorney-General, Mr. Stanton, for an opinion on the case. He failed to prepare one, and on April 25, 1861, his successor, Mr. Bates, upon "the claimants urging the consideration of their case," proceeded to give his views on the questions submitted.

On the facts, as he states them, he held that there was an "impressment" of the train by the military forces, and that the government was liable for its value. (See vol. 10, Opinions Attorneys-General, p. 21.)

On this opinion being forwarded to the Third Auditor, an informal finding was made by that officer, entered in a book provided for that purpose by a clerk, *but never signed by the Auditor*, dated May 10, 1861, as follows:

In pursuance of an act of Congress, approved 3d of March, 1849, entitled "An act to provide for the payment for horses and other property lost or destroyed in the military service of the United States," and of an opinion of the Attorney-General, dated April 25, 1861, it is adjudged that there is due from the United States to James and Richard H. Porter, for property impressed by order of Col. A. S. Johnston, then in command of the United States forces *en route* for Utah, and lost by them in the fall of 1857, while transporting goods from Atchison, Kansas Territory, to Camp Scott, Utah Territory, and while said property was in the service aforesaid, as follows:

170 head of cattle, at \$55 per head.....	\$9, 350
5 horses and mules, at \$150 each.....	750
	10, 100

And this sum is payable to the claimants present.

Upon this so-called award being forwarded to the then Secretary of the Treasury, Hon. S. P. Chase, for the execution of the usual Treasury warrant, he declined to execute it for the reasons stated in a letter as to it, dated November 3, 1863, and set out below, the parties desiring a formal expression of opinion from Secretary Chase as to the basis of *his* action.

On the record of the so-called award for \$10,100 appears this entry:

APRIL 16, 1864.

The foregoing award this day returned to this office by First Comptroller as per his letter of this date, and with the information that the accounts stated therein had been canceled. The award, he states, is returned by direction of the Secretary of the Treasury.

R. J. ATKINSON.

Next in order is the letter of Secretary Chase, above referred to:

In the matter of J. and R. H. Porter.

TREASURY DEPARTMENT, November 3, 1863.

The case of the claim of J. and R. H. Porter has been heretofore decided so far as the Secretary has jurisdiction over it, but, for the satisfaction of the parties, is now more formally repeated, with a brief statement of the reasons for it.

The claim is asserted under the act of 3d March, 1849, which provides that persons who sustain damage by the abandonment or destruction by lawful military order of any horse, mule, wagon, cart, boat, sleigh, or harness while in the military service of the United States, and without fault or negligence of the owner, shall be allowed and paid the value at the time he entered the service. The same rule applies to damage sustained by the death or abandonment and loss of any horse, mule, or ox while in the service from failure of the United States to supply sufficient forage, and to any damage by loss or destruction by unavoidable accident of any horse, mule, oxen, wagon, cart, boat, sleigh, or harness. The claimants assert that they sustained damage by the destruction or abandonment of oxen, mules, and horses, and by depreciation of

other animals and extra expenditures of various kinds, occasioned by an order of Colonel Johnston, dated "Headquarters Army of Utah, South Pass, *en route* for Salt Lake City, 19th October, 1857." At the time the order was given, the claimants, with their teams, were conveying supplies to the Mormons, then in rebellion against the United States, but there is nothing in the papers to show that at the commencement of the trip they were aware of the existence of the rebellion.

The order of Colonel Johnston was designed to prevent any intercourse with the Mormons or the introduction of supplies of any kind for them. Under its operation the progress of the claimants with their teams was arrested, and they moved thenceforward under military supervision. There is nothing in the papers to show that they were not at liberty to go back to the place whence they came, or that any application was made for permission to do so. A portion of the property belonging to the claimants appears to have been actually used under military orders for the troops, and for the property thus used it is understood that compensation has already been made. The simple question as to the residue is whether the placing of it under military supervision was bringing it into such military service as the act of March 3, 1849, contemplated.

In my opinion, neither the claimants nor their property, except so far as actually taken for consumption or use by the troops, were in the military service of the United States within the meaning of the law.

Whether the damage complained of by the claimants was caused by the order of Colonel Johnston, or, if caused by it, should be paid for by the United States, is a different question.

It involves the much larger question whether all damage to citizens conveying supplies to rebels, and prevented from doing so by the orders of the government, are entitled to compensation for damages sustained, in the absence of proof that they were aware at the commencement of the conveyance of the existence of the rebellion. This is a question for the exclusive consideration of Congress.

My conclusion is that the Messrs. Porter are not entitled to compensation under existing laws to the extent of their claim, nor entitled to compensation for damages resulting directly or indirectly from the order of Colonel Johnston, nor for any damage caused by any military order which did not subject their property to actual use or consumption by the government.

For the property, if any, described in the law, and so used and consumed, not already paid for, they are entitled to compensation.

A question has been made whether this case, having already been acted upon by the Auditor, has not passed beyond the jurisdiction of the Secretary. I think not. The Auditor originally declined to allow the claim. The case was subsequently referred by my predecessor to the Attorney-General, who left it undecided. Subsequently the present Attorney-General expressed the opinion that the property of the claimants was impressed into the military service by the order of Colonel Johnston. In conformity with this opinion, the Auditor made an award in favor of the claimants, upon which a warrant was drawn for the signature of the Secretary.

The circumstances having been stated to me, I declined signing the warrant, concurring in the original opinion of the Auditor, and not in that of the Attorney-General. The case was therefore again referred to the Auditor for his action. The papers were, however, not actually sent back, because it was not supposed that under the original opinion of the Auditor, concurred in by the Secretary, any foundation remained for further allowance to the claimants. They are now returned with this decision.

S. P. CHASE,
Secretary of the Treasury.

Mr. R. J. ATKINSON,
Third Auditor, &c.

The next succeeding steps in the history of the case are best related by an extract from an opinion of Hon. B. Wilson, Solicitor of the Treasury, to whom the matter was referred later for his opinion as to Porter's rights. This letter is dated September 21, 1874, and is addressed to the then Secretary of the Treasury, Hon. B. H. Bristow. He says:

After Mr. Chase's refusal to recognize the award of March 10, 1861, and his formal decision of November 3, 1863, it seems to have been agreed all round that the case should be again referred to the Third Auditor. The claimants had, in the mean time, exhausted the consideration of a mandamus from the Supreme Court to compel the Secretary to draw his warrant, and had doubtless also used in vain all the arguments and facts within their reach to induce him to pay.

On March 26, 1864, Dr. Porter filed *additional testimony* with the Third Auditor, and requested speedy action in the case. (See letters. Appendix A, B, C.)

On April 4 Mr. Chase addressed a letter to F. P. Stanton, attorney for the claimants, at his (Stanton's) instance, *removing any restraint upon the reconsideration of the*

case by the Auditor which the former action of the Secretary (his letter of November 3, 1868) might have been thought to impose.

He distinctly recognized that the Third Auditor might *reconsider the case on its merits*.

On the 6th of April Mr. Stanton inclosed the Secretary's note to Mr. Atkinson (still Third Auditor), as "*removing all impediment in the way of the settlement of the case*," and with the clear approval of Dr. Porter. The doctor and his attorney obtained Mr. Chase's letter for the express purpose of enabling the Auditor "to act without any embarrassment whatever" in the case.

The case was then reopened, not only with the full consent but upon the direct procurement of the claimants and their attorney; but new testimony was filed, and as there had been no changes in the court, and as Mr. Atkinson and Mr. Chase were the officers identified with the original award and action thereon, it was entirely lawful and proper to reopen the case, and it was so reopened.

Officials at the Treasury Department inform us that on the second hearing arguments were made by the claimants' attorney claiming the whole amount, \$30,000, and elaborate briefs were filed and much correspondence had between the claimants' attorneys and the Third Auditor before the hearing. It will appear by the files of the case in the Treasury Department that in every sense of the word the hearing which resulted in the award of April 16, 1864, was a trial *de novo*, and on the full merits of the claim; and not only by the *consent* of claimants, but at their persistent, earnest efforts to that end, all the old evidence and a large amount of new proof used; the old arguments and new briefs; additional counsel called in, and the old battle refought. The award resulting is this (the legal effect of which will be argued hereafter):

Award No. 2139.

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,
April 16, 1864.

In pursuance of an act of Congress approved 3d of March, 1849, entitled "An act to provide for the payment of horses and other property lost or destroyed in the military service of the United States," it is adjudged that there is due from the United States to James and Richard H. Porter for five mules and horses impressed into the service of the United States and died for want of forage whilst employed thereon, viz, for three mules and two horses at \$150 each, \$750, and this sum of \$750 is payable to the claimants, present. *This award is made in lieu of award No. 1679, dated May 10, 1861, which said award has not been paid by the Secretary of the Treasury, but has been returned to this office by direction of the Secretary through the First Comptroller, as per letter dated April 16, 1864, to that effect, and also advising the Third Auditor that the accounts stated therein have been cancelled.*

R. J. ATKINSON, Auditor.

Mr. Atkinson, the Third Auditor, addressed this letter to Secretary Chase, as to the reasons for the last award:

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,
April 14, 1864.

SIR: On the 10th May, 1861, the Third Auditor of the Treasury made an award in favor of Messrs. James and Richard H. Porter for compensation for property impressed by order of Colonel Johnston, then in command of the United States forces en route for Utah, and lost by them in the fall of 1857, while transporting goods from Atchison, Kansas Territory, to Camp Scott, Utah Territory, and while said property was in the service aforesaid, as follows: One hundred and seventy-five head of cattle at \$55 per head, \$9,350, and five horses and mules, at \$150 each, \$750, making an aggregate sum of \$10,100. *This award was made in pursuance of an opinion of the Attorney-General, dated April 25, 1861, under the second section of the act of March 3, 1849, "to provide for the payment of horses or other property lost or destroyed in the military service of the United States."*

The warrant for the sum awarded by the Third Auditor, as above, went to the Secretary of the Treasury in due course for his signature, and after consideration the Secretary declined to sign it, and on the 3d November, 1863, addressed to the Third Auditor a letter communicating his views with regard to the law and the subject-matter of the claim. The concluding portion of that letter is as follows:

"My conclusion is that the Messrs. Porter are not entitled to compensation under

existing laws to the extent of their claim, nor entitled to a compensation for damages resulting directly or indirectly from the order of Colonel Johnston, nor for any damages caused by any military order which did not subject their property to actual use and consumption by the government. For the property, if any, described in the law, and so used and consumed, not already paid for, they are entitled to compensation.

"A question has been made whether this case, having already been acted upon by the Auditor, has not passed beyond the jurisdiction of the Secretary. I think not; *the Auditor originally declined to allow the claim.* The case was subsequently referred by my predecessor to the Attorney-General, who left it undecided. Subsequently the present Attorney-General expressed the opinion that the property of the claimants was impressed into the military service by the order of Colonel Johnston. In conformity with this opinion, the Auditor made an award in favor of the claimants, upon which a warrant was drawn for the signature of the Secretary.

"The circumstances having been stated to me, I declined signing the warrant, concurring in the original opinion of the Auditor and not in that of the Attorney-General. The case was therefore again referred to the Auditor for his action. The papers were, however, not actually sent back, because it was not supposed that under the original opinion by the Auditor, concurred in by the Secretary, any foundation remained for further allowance to the claimants. They are now returned with this decision."

Agreeably to the suggestion contained in the Secretary's letter, and after verbal consultation with him and further explanation as contained in a letter from the Secretary of the 4th inst., addressed to Hon. F. P. Stanton, attorney for the claimants, which is on file in this office, the Third Auditor has *reconsidered the testimony* in connection with the view of the law expressed by the Secretary and entertained by himself, irrespective of the opinion of the Attorney-General, and respectfully submits the following as the result thereof:

For the cattle claimed to have been lost, the Auditor is of the opinion that the testimony does not show *actual use and employment and loss while being so used and employed in the military service.* The proof only tends to show losses resulting from other circumstances—such a constraint in the order of march, herding of large numbers of cattle together, and consequent scarcity of grass, and unusual severity of weather, as well as some indiscriminate use of cattle belonging to claimants and government trains, &c., all of which are claimed to have resulted directly or indirectly from the order of Colonel Johnston.

Therefore, in the view of the law entertained by the Secretary and Auditor, no allowance can be made for these losses. As to the five horses and mules embraced in the former award it is in evidence that "three mules and two horses, while they were actually worked in the government wagons, died from want of food and from overwork." The Auditor is of opinion that this portion of the claim, amounting as before stated to \$750, may be considered as embraced in the law. So much of the award may, therefore, be paid as upon the judgment of the Third Auditor.

I have the honor to be, very respectfully, your obedient servant,

R. J. ATKINSON,
Auditor.

Hon. S. P. CHASE,
Secretary of the Treasury.

On this award, No. 814, a sight draft for \$750, No. 8237, payable to Porters, was duly drawn and paid April 18, 1864.

This payment was received without any protest whatever on the part of the claimants, or at least no evidence of any appears of record, as is shown by the following letter of the Acting Auditor:

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,
May 13, 1873.

SIR: In reply to a letter from your office of February 24, 1873, * * * for certain papers to be used in the case (No. 6167) of James and Richard H. Porter *vs.* The United States, * * * I have the honor to transmit the copies and transcripts referred to as requested.

As actual payment was not made by this office, *and as there is nothing in the papers in the case to show whether the sum allowed in award No. 2139, dated April 16, 1864, was or was not received under protest, I cannot give the information requested relative to the matter.*

Very respectfully, your obedient servant,

A. M. GANGEWER,
Acting Auditor.

Hon. WM. A. RICHARDSON,
Secretary of the Treasury.

The draft is in the usual form, and shows no protest or anything to indicate that it was not, as the award in express terms states, *in lieu of*

award No. 1679, which said award has not been paid, but has been returned to this office, &c.

Mr. Atkinson going out of office as Third Auditor, Porters applied to his successor, John Wilson, esq., for an allowance above the \$750, in the spring of 1865, and that officer, in a letter addressed to the Secretary of the Treasury, held as follows :

In the matter of J. & R. H. Porter.

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,
March 9, 1865.

In this case the Messrs. Porter were transporting supplies to the Mormons, then in rebellion against the government.

General Johnston very properly forbade those supplies from going forward ; for by permitting them to go it would have been furnishing aid and comfort to the enemy.

In the state of the case then existing, there was no hinderance to the return of the Messrs. Porter to the States with their teams and goods. It seems the Messrs. Porter preferred to take the risk of going forward and disposing of their property as they could, and of course they must take the consequences of their own risk. So far as their property is concerned that was taken by the Army, they have been properly paid for it.

The reasoning that would place their property in the military service of the United States, and therefore provided for by the act of 1849, is too fine a syllogism to satisfy my judgment of that fact. It was not in the military service of the United States, and therefore not provided for by law. If any of this property was taken by General Johnston's quartermaster or commissary, other than that for which they have been paid, they should have shown that fact, so that the proper quartermaster or commissary could have been charged with it and they paid for it. Failing to do so, the inference is that there is none such, and therefore nothing due them.

JOHN WILSON,
Auditor.

Not disheartened, claimants presented the claim again to Mr. W. E. Chandler, Assistant Secretary of the Treasury, on June 5, 1865, who called on the Third Auditor for an opinion and all the papers in the case. The result of this call were the following letters of July 8, 1865, to the Secretary of the Treasury :

THIRD AUDITOR'S OFFICE, July 8, 1865.

SIR: In accordance with your direction I have carefully examined the claim of J. & R. H. Porter for the loss of stock and wagons in transporting merchandise from Atchison, Kans., to Salt Lake City, and in relation thereto beg leave to report—

That on the 13th August, 1857, the wagons, &c., of the Messrs. Porter left Atchison, and proceeded on their journey. On the 19th October, 1857, when they reached South Pass, they were ordered by General Johnston, then in command of the Army sent against the Mormons, who were in open rebellion against the United States, not to pass the Army or hold any communication with the Mormons. All merchants' wagons were required to move in the rear of the Army, and those of Messrs. Porter were nearly the last. The weather became severe, snow fell, and consequently pasturage scarce. The cattle in front consuming the greater part of the best pasture, but little was left for those in the rear. In consequence of the scarcity of food great numbers of the cattle died, so that enough were not left to draw the trains. In fact only about one-fourth of the trains could be moved at a time, and, to do this, all the cattle were employed indiscriminately; that is, one-fourth of the train would be hauled forward a number of miles—all the cattle being required to perform this service. The whole would then be sent back for the next fourth, and so on to the end. By this arrangement, all the wagons and the merchandise reached Fort Scott in safety. *None of these merchant trains were in the military service of the United States by impressment, or in any other manner.*

The Mormons were in open rebellion, and General Johnston was marching an army against them. When he overtook these trains he positively forbade them going in front of his army or holding any communication with the Mormons. This he had a perfect right to do, to prevent supplies or information from reaching the Mormons, then in armed resistance to the government. *He did not prevent these trains from returning to the States; but that was not the wish of those having them in charge; they desired to go on to Salt Lake City, and demanded that as a right.*

When the cattle perished to that extent that only one-fourth the train could be

moved at a time, the government cattle were used to move the merchant train in conjunction with their own. This is not an impressment into government service, but that spirit of mutual assistance and protection common to all persons under such circumstances. The merchant cattle, no doubt, used to aid in moving the government train, but that service was more than reciprocated by the government cattle being used to aid in moving the merchant trains; for without that assistance their merchandise and wagons would all have been lost. The only coercion or military rule exercised on the merchants' train was to prevent them furnishing supplies or information to the Mormons. Those trains could not therefore be regarded as in the military service of the United States; and not being in the military service, they have no claim under the act of 3d March, 1849.

But there is another view of this case. By the accompanying letter of the 5th instant from the War Department, it appears that the fitting out of this expedition against the Mormons, which was commanded by General Johnston, as above stated, became matter of notoriety some time after June 1, 1857, about which time several staff departments at Saint Louis and Fort Leavenworth received instructions to fit it out. The fact of the Mormons being in armed resistance to the authority of the United States, and the fitting out this expedition, were matters of public notoriety when the first contract was made, 19th June, 1857, to transport this 100 tons merchandise to Salt Lake City, and was certainly well known when these merchant trains left Atkinson for Salt Lake with that merchandise on the 13th August, 1857. Such being the facts, these parties incurred risks, for the consequences of which no relief should be given by the United States. A contrary practice would be to establish a precedent that the government should pay for all losses sustained by individuals in attempting to furnish supplies to persons in armed resistance to the government, when such losses were caused by the intervention of the government to prevent such supplies from reaching their destination.

It appears that the wagons and merchandise reached Fort Scott. All the cattle then remaining of the Messrs. Porter's stock were then sold. Of course they had no means of moving their wagons from Fort Scott, and consequently they were left there. It is stated by some of the witnesses that the cattle were mixed, and many of Porter's cattle were slaughtered for the army. The officer in charge says that great care was taken to prevent the cattle from being mixed; and when that occurred occasionally, they were promptly separated. He also states that when any cattle belonging to individuals were accidentally slaughtered for the army, other cattle as good were at once given in exchange, or the cattle paid for. And in this great scarcity of cattle then and there, and the high prices, every one taken for the government must have been known to that officer or his assistant.

The foregoing is merely suggestive, however, for when Mr. Atchison made an award, according to his own judgment, disallowing this claim, that award was final under the act of 1849, and can only be reversed by authority of Congress.

Very respectfully, your obedient servant,

JOHN WILSON, *Auditor*.

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,

July 8, 1865.

SIR: In accordance with your direction that I should report the present condition of the claim of James and Richard H. Porter for property lost by them in the fall of 1857, while transporting merchandise to Salt Lake City, so far as the action of this office is concerned, I have the honor to state that the Third Auditor, on 2d January, 1861 (No. 1), addressed a letter to the Secretary of the Treasury, in which he says: "Having doubts whether the claim was such an one as is provided for in the law, and there being other claims amounting to a large sum in which the same questions are involved, I respectfully request that you will refer the same to the Attorney-General for his opinion thereon, and for my direction," &c. (See numbers at the bottom of paper.)

On the 25th April, 1861, the Attorney-General gave an opinion that these claims were embraced by the act of 1849. (2.)

On the 10th of May, 1861, the Auditor made an award in favor of these claimants, as stated therein, "In pursuance of an act of Congress * * * and of an opinion of the Attorney-General, dated April 25, 1861." (3.)

The attention of the Secretary of the Treasury having been called to this case he declined signing a warrant for the award of the Auditor thus found on an opinion of the Attorney-General, for the reason that "the Auditor originally declined to allow the claim. The case was subsequently referred by my predecessor to the then Attorney-General, who left it undecided; subsequently the present Attorney-General expressed the opinion that the property of the claimant was impressed into the military service by the order of Colonel Johnston. In conformity with this opinion, the Auditor made an award in favor of the claimants," &c. (See Mr. Chase's opinion, No. 4.)

On the 14th April, 1864, the Third Auditor addressed a letter to the Secretary of the Treasury, in which he states that he "has reconsidered the testimony in connection with the view of the law expressed by the Secretary and entertained by himself, irrespective of the opinion of the Attorney-General, * * * and holds that no allowance can be made for the losses," with the exception of certain cases therein mentioned, amounting to \$750. (5.)

From the foregoing it is evident that the award of the Auditor of \$11,100 was made as stated by him, on the opinion of the Attorney-General; that, in his own opinion, only \$750 of these claims should be allowed; and as the act of 1849 makes the opinion of the Third Auditor in such cases final, the award on the opinion of the Attorney-General is a nullity. *And as the claimants themselves applied to me to examine this case, that application was a waiver of any bar caused by the previous decision.*

With great respect, your obedient servant,

JOHN WILSON, Auditor.

Hon. H. McCULLOCH,
Secretary of the Treasury.

Failing at the department, Porter next tried the courts. After these letters of July 8, 1865, they applied to the supreme court of the District for a mandamus, setting up the original award, the second of \$750, and seeking to have the usual order on Secretary McCulloch to pay the balance, \$9,350; this was July 29, 1865, and the case No. 1776. Issues were formed, and, as we are advised, the case argued, and the court announced its decision, holding for the government on two points—that the receipt of the \$750 was a bar to further proceedings, and that the court could not, by mandamus, control the head of a department in a matter quasi-judicial in character.

But before the formal degree was drawn, the attorney for the petitioner asked and obtained leave to withdraw the papers, and they cannot now be found. This leave was December 9, 1869, as appears of record.

Pending this action in the supreme court, the Porters again secured a hearing in the Department of Justice, and on March 27, 1869, Attorney-General Hoar delivered an opinion on the two questions presented by the record to him, viz :

1. Whether the award of May 10, 1861, is at present in full force ?
2. If any additional payment should be made by the Treasury Department ?

And he says, "After careful consideration of all the facts I conclude that the award is no longer of any force."

As to the second question, as the first award was of no validity, he holds, that to entitle the parties to any additional payment on their claim it must now be passed on and approved (as a new case) by the Second Comptroller as well as the Third Auditor, under section 8, act of July 28, 1866 (14 Stat., 327), the act of 1849 having been amended so as to require the concurrent action of both officers in an award. (See 13 Op. A. G., p. 9.)

Another tribunal was open, and to it the claimants went—the Court of Claims. Assuming that the so-called award of 1861 was a judgment or an adjudicated claim, and that hence an implied, if not express, promise arose on the part of the government to pay it, they sued the United States in that court on April 14, 1870. The case was pending till January 18, 1875, when, as the record shows, a demurrer filed by the Attorney-General was sustained, judgment for the defendant given, and the petition dismissed.

Pending this suit, a new Secretary of the Treasury was appointed—Hon. W. A. Richardson—and claimant applied to him for relief. He sent the case to Hon. E. A. Banfield, then Solicitor of the Treasury, for an opinion whether the award of May 10, 1861, was a valid claim against the government.

November 22, 1873, that officer gave the following opinion, which Secretary Richardson approved :

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., November 22, 1873.

SIR: I have the honor to return herewith the papers relative to the claim of J. and R. H. Porter for cattle alleged to have been taken from them by Col. Johnston commanding the United States military expedition on its way to Utah in the fall of 1857. My opinion is asked whether or not the award of the Auditor, a copy of which is with the papers, constitutes a valid claim against the government.

The so-called award referred to is that dated May 10, 1861, and is as follows:

"In pursuance of an act of Congress approved 3d of March, 1849, entitled 'An act to provide for the payment of horses and other property lost or destroyed in the military service of the United States,' and of an opinion of the Attorney-General, dated April 25, 1861, it is adjudged that there is due from the United States to James and Richard H. Porter for property impressed by order of Colonel Johnston, then in command of the United States forces en route for Utah, and lost by them in the fall of 1857, while transporting goods from Atchison, Kansas Territory, to Camp Scott, Utah Territory, and while said property was in the service aforesaid, as follows:

170 head of cattle at \$55 per head.....	\$9, 350
5 horses and mules at \$150 each.....	750
Total.....	10, 100

"And this sum is payable to the claimants present."

The Auditor derived his authority to act upon this claim from the act of March 3, 1849, the second section of which provides that where any horse, mule, or ox, while in the military service of the United States by impressment or contract was abandoned or destroyed by order of the commanding officer, or where the same was lost by failure on the part of the United States to furnish sufficient forage, the person sustaining damage on account thereof should be allowed and paid the value thereof at the time he entered the service.

The third section provides that these claims should be adjusted by the Third Auditor. The fourth section is in these words:

"That in all adjudications of said Auditor upon the claims above mentioned, whether such judgments be in favor of or adverse to the claim, shall be entered in a book provided by him for that purpose, and under his direction; and when such judgment shall be in favor of such claim, the claimant, or his legal representatives, shall be entitled to the amount thereof, upon the production of a copy thereof, certified by said Auditor, at the Treasury of the United States."

The statute gives to the Auditor only the right to adjust claims arising under it. Yet the award declares that it is in pursuance of an opinion of the Attorney-General dated April 25, 1861. It is not given, therefore, as the judgment of the tribunal provided by the statute.

Upon inspecting the book in which the Auditor enters his adjudications, as required by the statute, I find an entry as hereinbefore recited, written out, but not signed by that officer. All others have his name, signed by himself, subscribed thereto. This fact, with the history of the case, both before and after the date of the so-called award, shows not only that it was not in accordance with the opinion of the Auditor, but that it was in fact no award.

In case an award is in favor of a claimant, the act further provides that he shall be entitled to the amount upon the production of a copy thereof, certified by said Auditor, at the Treasury of the United States.

If a certified copy were made out of the entry in question, it would be simply a writing without the formalities and incidents which accompany every other award, and which could give them validity.

Upon an examination of the papers, I find that under date of April 16, 1864, the Auditor made an award, which was duly entered and signed by him, as follows:

"In pursuance of an act of Congress approved 3d of March, 1849, entitled 'An act to provide for the payment of horses and other property lost and destroyed in the military service of the United States, it is adjudged that there is due from the United States to James and Richard H. Porter for five mules and horses impressed into the service of the United States and died for want of forage whilst employed therein, viz:

"For three mules and two horses, at \$150 each, \$750, and this sum of \$750 is payable to the claimants present.

"This award is made *in lieu* of award No. 1679, dated May 10, 1861, which said award has not been paid by the Secretary of the Treasury, but has been returned to this office by direction of the Secretary through the First Comptroller, as per letter, dated April

16, 1864, to that effect, and also advising the Third Auditor that the accounts stated therein have been canceled.

“R. J. ATKINSON, *Auditor.*”

The claimants under this award received the sum of \$750.

In addition I find the following letter from the Third Auditor in relation to the matter:

“TREASURY DEPARTMENT,
“THIRD AUDITOR’S OFFICE,
“March 9, 1865.”

(See *ante* for this letter.)

The same Auditor, under date of July 8, 1865, again refused to allow the claim.

It thus appears that from first to last the judgments of the accounting officers have been adverse to this claim.

My judgment upon all the facts is that the so-styled award of 1861 has no validity, first, because it was not signed by him, and second because the Auditor, supposing he was bound by the opinion of the Attorney-General, without due consideration, undertook to substitute that opinion as the basis of an award. He afterwards became satisfied that he had erred. No judgment had been entered, no authenticated copy delivered to the claimant, and no money paid. The claim was still open and before him for adjudication. This being so, an adjudication was made April 16, 1864, in accordance with the statute. Under it claimants accepted the \$750 then awarded and have no further claim against the government arising from the transaction in question.

Very respectfully,

E. C. BANFIELD,
Solicitor of the Treasury.

Hon. W. A. RICHARDSON,
Secretary of the Treasury.

A new Secretary of the Treasury came in, and to him, Hon. B. H. Bristow, the Porters again applied for a rehearing on July 20, 1874. He referred the case to Hon. Bluford Wilson, Solicitor of the Treasury, for an investigation, and, after evidently a full examination, that office gave the following decision:

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., September 21, 1874.

SIR: I have the honor to acknowledge the receipt of your letter of the 20th of July last, referring to me the papers relative to the claim of J. & R. H. Porter for the value of cattle alleged to have been taken from them by Colonel Johnston, commanding the United States military expedition to Utah in the fall of 1857, and requesting me to consider the questions arising therein in the following order:

1. Whether or not the action of your predecessor indorsed on the opinion of the Solicitor of the Treasury dated November 22, 1873 (the indorsement bearing date November 25, 1873), is conclusive on this department.

2. Whether or not the acceptance by the claimants of the sum of \$750 awarded to them, as appears from the report of the Solicitor of the Treasury, amounts to an estoppel to their further prosecution of the claim.

3. If I shall arrive at the conclusion that the Secretary of the Treasury can entertain further jurisdiction of this case, that I will further inquire whether or not, upon its merits, anything is due the claimants under the law.

In compliance with your request, I respectfully submit the following as embodying my views in regard to this claim and the questions submitted for my consideration.

R. H. Porter, under date of October 5, 1873, addressed a communication to the Secretary of the Treasury, in which he represented that an award was made by the Third Auditor to J. & R. H. Porter, for \$10,100, under the act of March 3, 1849, and upon the opinion of the Attorney-General, April 25, 1861, for cattle taken from them by Colonel Johnston, commanding the United States forces en route to Utah in the fall of 1857, and he requested the Secretary to cause the claim to be paid.

This letter, with the papers in the case, was referred to the Solicitor of the Treasury November 4, 1873, for his opinion as to the point whether the award of the Auditor constitutes a valid claim against the government.

The Solicitor, under date of November 22, 1873, informed the Secretary that in his opinion this award did not constitute a valid claim against the United States. Upon the letter containing the opinion of the Solicitor is written “Treasury Department, Secretary’s Office, November 25, 1873. Approved. Wm. A. Richardson, Secretary.”

Is this action conclusive on you as the successor of Mr. Richardson?

It has long been a settled rule that the final decision of a case before the head of a department is binding upon his successors. The exceptions are, in cases of rejected claims in which material testimony is afterwards discovered and produced, and where there have been mistakes in matters of fact arising from errors in calculation. It is also well understood that one Secretary has the same power as another to give a construction to an act which relates to the business of his department.

I am not aware that the right of review extends to any other class of cases.

It is apparent, therefore, if the action of your predecessor falls within the rule above recited that it must be held to be conclusive.

The question before Mr. Richardson, as well as before every Secretary since and including Mr. Chase, involved the title of the Messrs. Porter to the \$10,000 claimed by them under the terms of the award above mentioned, less \$750 paid them under the subsequent award of April 16, 1864.

It is conceded that it was the sole prerogative and duty of the Third Auditor to make the actual adjustment of the claims of the Porters for the value of property alleged to have been impressed from them by Colonel Johnston's command, and to determine what sum, if any, was due therefor. It is also conceded that judgment once formally entered by the Auditor in accordance with the law settles the rights of the parties, and concludes the case, leaving to other accounting officers only the duty of stating the account, and to the Secretary the duty of signing the proper warrant. This, however, involves a further responsibility. He must, before he signs, assure himself not only that the warrant is formal, but he must know also that the claim which it is to pay is really a lawful debt of the government. In this case it would not be incumbent upon the Secretary, in order to satisfy himself upon this point, to look beyond the copy of the award certified by the Auditor.

And it does not appear that any of your predecessors in passing upon the claim have gone behind the award.

Admitting the argument of learned counsel for claimants that the duty of the Secretary in the premises is ministerial merely, and that the decision of the Auditor on the merits of the claim is conclusive, it must still follow that the Secretary, in performing this purely ministerial duty, is directly charged with the responsibility of knowing that the award before him is what it purports to be—the very decision, judgment, award of the Auditor himself, and not of some one else. The Secretary may not draw warrants to pay awards which, although they may be certified by the Auditor, yet show upon their face that they are the acts of another officer.

Mr. Chase states with great precision the principles that governed his action in his letter to F. P. Stanton, esq., attorney for claimants, June 8, 1863.

“First. The decisions of an Auditor or Comptroller on claims are in the nature of judicial decisions and are in general conclusive.

“Second. Where an Auditor has allowed a claim contrary to his own judgment, upon the opinion of the Attorney-General, it is the duty of the Secretary, if he does not concur in that opinion, to suspend payment of the claims, referring the matter to the Auditor for reconsideration.

“Third. Where an Auditor undertakes to allow a claim beyond his jurisdiction, his allowance is not binding on the Secretary.”

Upon these principles, after a full review of the merits of the case, and after most elaborate argument of counsel, Mr. Chase held that the award of March 10, 1861, was in fact no award, not being the judgment of the Third Auditor, but of another and wholly distinct officer.

The act of March 3, 1849, provides specifically that the claims covered by the law shall be adjusted by the Third Auditor. He cannot delegate his authority to adjust to any other officer or person, not even to the Attorney-General. If to the latter, then he may to the Comptroller or other officer, and, finally, with just as much legal propriety to any outside party. He may have in proper circumstances the opinion of the Attorney-General on doubtful questions of law involved in the particular case, and ordinarily should accept it as final, but it is not permissible for him to surrender his own judgment on the general merits of the case when it conflicts with that of the Attorney-General. The law makes him the sole judge both of the law and the facts, and the award must represent his own conclusions and not another's. It is true he may adopt and make his own the conclusions of another, but that implies the exercise of reason, judgment, will, leading to acquiescence in the more logical and more satisfactory deductions of another.

Such, however, was not the case in this instance. The Auditor's judgment was in continued conflict with the opinion of the Attorney-General. This was well known as matter of fact to Mr. Chase, and appears as well from his own statements as from those of Mr. Atkinson, the Auditor. It was besides apparent to Mr. Chase on the face of the award. Decisions of the latter against the claim on its merits previous to the opinion of the Attorney-General are also with the papers. The judgment, the consent, of the Auditor not being in it, it was not his act. The Secretary was not bound, therefore, to draw his warrant or recognize the validity of the award. It was com-

petent for him, and he had the right, to refuse to do so. Indeed, it was right that he should so refuse. But whether right or wrong, it was his duty, and plainly within the ordinary range of his jurisdiction, to pass upon the validity of the award, although it involved the title of the Messrs. Porter to the money named therein.

If there was no award, there was no title nor vested right. He did pass upon the question. His decision was elaborate, adverse to the claimants, and, upon the principle already stated, is conclusive upon his successors. Practically it has been so regarded by them. Mr. Fessenden considered the claim, and did not pay it. Mr. McCulloch referred it to the Attorney-General, who decided that the award was no longer of force. (Case of J. & R. H. Porter, 13 Op. A. G., 9.) Mr. Boutwell considered and did not pay it. Mr. Richardson, as we have seen, referred it to my predecessor, who held that there was in reality no award, and this opinion was formally approved by the Secretary. It cannot alter the principle that succeeding Secretaries, instead of holding the case *res adjudicata*, may have appeared to rest their several refusals to pay upon other grounds. If their conclusions not to recognize the claim really rested on other grounds, it would seem, after so many independent, unfavorable decisions, that the case ought now certainly to be held closed. If upon the same grounds, there is then an almost overwhelming weight of authority in favor of their final and full acceptance as absolutely conclusive upon you. But the true view, as we have endeavored to show, is that each succeeding Secretary was bound by the original decision of Mr. Chase. It was the right of any one of your predecessors to apply this rule to the case, and so shut out the claimants. Their failure to do so, and the successive rehearings, may have been out of grace and favor to the claimants, but it does not change the law nor interfere with your right to apply it. I am of the opinion therefore, upon the whole, that you are precluded from examining as to the rights of the Messrs. Porter, first by the decision of Mr. Chase. But in the absence of such decision, and in default of final action by any of his more immediate successors, that of Mr. Richardson would just as clearly conclude you.

It was not rightfully within the power of any Secretary, after Mr. Chase's decision on the validity of the award, to reopen the case, except for new testimony. And it must be noted that the new testimony must not only be material, but it must fit the precise issue before you, which is merely as to the validity of the award, and not as to the original merits of the claim.

In this connection it is proper to observe that the new affidavits filed by the claimants since the case was referred to me, relate only to the original merits; and in response, it is in my judgment quite sufficient to say that the new papers are for the consideration of the Auditor alone. I state the rule to be in such claims that testimony on the merits looking to a rehearing is addressed to the discretion of the Third Auditor or the Second Comptroller, who are alone competent to grant rehearings or new trials.

As the papers lately filed have no direct reference to the question before you, and decided by Mr. Chase, they cannot avail to reopen that question.

The second query propounded by you, "Are the claimants estopped by receiving the \$750 awarded to them?" now requires attention.

The facts relative to the award may be briefly stated.

After Mr. Chase's refusal to recognize the award of March 10, 1861, and his formal decision of November 3, 1863, it seems to have been agreed all round that the case should be again referred to the Third Auditor. The claimants had in the mean time exhausted the consideration of a mandamus from the Supreme Court to compel the Secretary to draw his warrant, and had doubtless also used in vain all the arguments and facts within their reach to induce him to pay.

On the 26th March, 1864, Dr. Porter filed additional testimony with the Third Auditor, and requested speedy action in the case.

On the 4th April Mr. Chase addressed a letter to F. P. Stanton, attorney for claimants, at his instance, removing any restraint upon the reconsideration of the case by the Auditor which the former action of the Secretary might have been thought to impose. He distinctly recognized that the Auditor might reconsider the case on its merits.

On the 6th April Mr. Stanton inclosed the Secretary's note to Mr. Atkinson *as removing all impediment in the way of the settlement of the case*, and with the clear approval of Dr. Porter. The doctor and his attorney obtained Mr. Chase's letter for the express purpose of enabling the Auditor "to act without any embarrassment whatever."

The case was then reopened, not only with the full consent but upon the direct procurement of the claimants and their attorney. New testimony was filed, and as there had been no change in the court, and as Mr. Atkinson and Mr. Chase were the officers identified with the original award and action thereon, it was entirely lawful and proper to reopen the case, and it was so reopened. The legal effect of the rehearing with the consent of all parties was, of course, to relegate all to their original positions. Whatever rights the Messrs. Porter may have acquired by the terms of the first award, they must be held to have waived on entering upon a new trial; and in this view of the

case it is, in my judgment, wholly unimportant what conclusion you may reach upon the first question suggested by you and discussed above.

I think it perfectly clear that the claimants, having voluntarily resubmitted their case to the Auditor, must be held to have surrendered all rights under the first and are bound by the terms of the second judgment.

This was rendered on the 16th of April, 1864, is numbered 2139, and adjudges \$750 to the claimants. On the same date the original award, 1679, was returned to the Auditor by direction of the Secretary, through the First Comptroller, and the accounts based thereon were canceled.

The claimants accepted payment of this last sum, though it is now claimed under protest. I find no written protest on file and no evidence thereof beyond the statement of Atkinson, as counsel for claimants, after he had ceased to be Auditor.

Upon the evidence presented the judgment was final. Congress provided the tribunal. There was no appeal allowed, and, in the absence of positive evidence of protest, the acceptance of the \$750 must be held to estop the claimants from the further prosecution of the claim; otherwise if protest was made, and new and material evidence has been since discovered. *But the application for a rehearing must be addressed to the discretion of the tribunal that has jurisdiction of the case and that rendered the judgment.*

As the eighth section of the act of July 28, 1866 (14 Stat., 327), gives the Second Comptroller right of revision in such claims, it is respectfully suggested that this officer may not only be competent, but may be the officer to consider and pass upon the application for rehearing instead of the Third Auditor.

I will add that after the second adjustment for \$750, the claim was, on the 9th of March, 1865, a third time examined by John Wilson, the then Auditor, on the direct application of the claimants. He rejected the claim as without merit.

The Messrs. Porter now seek a fourth examination.

In view of the fact that the case has already been three times heard on the merits by the Auditors, and that every Secretary of the Treasury since Mr. Chase has had the first award under advisement, uniformly refusing to order payment, it would seem that it ought now to be held finally settled in both directions.

Nevertheless, the question of a rehearing on the merits is in the discretion of the Third Auditor. If the claimants can satisfy that officer that their new evidence is material and not such as was within their power to produce at former hearings, he may grant them a new trial, provided the receipt of the \$750, without protest, does not constitute, under the practice of the departments and the decision of the courts, a legal estoppel from the further prosecution of the claim. Upon that the Auditor must also finally decide.

You cannot grant such rehearing except as to the validity of the first award, and as to that you ought not.

In conclusion I have respectfully to advise that as to the application of the claimants for the payment of the \$9,350, you decline to consider it:

First. Because you have no power to in view of the original decision of Mr. Chase.

Second. For the reason that the claimants themselves, in applying for and obtaining a rehearing, waived all rights that they may have acquired by the first award.

As to the application for a rehearing on the merits, I recommend:

First. That all the papers bearing on the adjudication before the Third Auditor be returned to his office and filed there.

Second. That the question of a rehearing be referred to him to be considered with special reference to the importance of the new testimony, and the diligence of the claimants in producing it, and also in the light of what is here said relative to the estoppel growing out of the prior award and payment of the \$750.

Finally, I express no opinion on the general merits of the claim, as the contingency under which you desired it has not arisen.

Very respectfully,

BLUFORD WILSON,
Solicitor of the Treasury.

On February 24, 1877, Mr. Kenneth Rayner (now Solicitor of the Treasury) addressed this request to President Grant:

WASHINGTON CITY, February 24, 1877.

SIR: I respectfully represent that injustice has been done J. and R. H. Porter, who were adjudged by the Third Auditor of the Treasury to be entitled to receive \$10,100 from the United States under the act of March 3, 1849. The Attorney-General of the United States (see Opinions Attorney-General, vol. 10, page 21), upon reference to him by Secretary Chase, decided the money was due and should be paid the claimants. Mr. Chase set aside the judgment of the Third Auditor, as I respectfully assert, without authority of law, because the Auditor, in his judgment, seemed to have been influenced and guided by the opinions of the Attorney-General, brought out by the request of the

Secretary himself. Afterwards, on April 4, 1864, Secretary Chase wrote: "If there is anything in my indorsement upon the papers of J. and R. H. Porter which is of such a character as to prevent the Third Auditor from reconsidering the matter and deciding according to his own judgment, it does not express my intention." Secretary Bristow, to whose attention this case was called, after it had been reopened on new proof filed, referred it to the Solicitor of the Treasury, who reported that the Third Auditor and Second Comptroller alone had authority under law to pass on the case, yet Secretary Bristow arbitrarily refused to allow them to do so. That justice may be done, I respectfully ask that the Third Auditor be directed to pass upon the case on its merits.

Your obedient servant,

K. RAYNER.

SECRETARY OF THE TREASURY.

On which President Grant made this indorsement:

Referred to the Secretary of the Treasury for his action in accordance with the merits of the claim.

U. S. GRANT.

FEBRUARY 28, 1877.

Ingenious and elaborate briefs were then filed with this letter with Assistant Secretary French, who took the case and after examination made this order (which was approved by Secretary Sherman):

Claim of J. and R. H. Porter.

MARCH, 1877.

This claim cannot be re-examined.

1. Because it was passed upon by the accounting officers and an allowance made April 16, 1864.
2. Because July 8, 1865, it was again examined and rejected by the Third Auditor.
3. Because November 25, 1873, it was again rejected by Secretary Richardson.
4. Because it has been before Congress.

H. F. FRENCH,
Assistant Secretary.

Approved.

JOHN SHERMAN,
Secretary.

The attorneys for Porters then applied to Assistant Secretary French to refer the case to the Attorney-General for his opinion. This was the result of that application:

[Indorsement.]

Application to refer the case to the Attorney-General.

APRIL 20, 1877.

This claim having been rejected by the Third Auditor July 8, 1865, and having been rejected by Secretary Richardson November 25, 1873, and having been presented to Congress, cannot be re-examined, and the request to refer it to the Attorney-General must be refused.

H. F. FRENCH,
Assistant Secretary.

Approved.

JOHN SHERMAN,
Secretary.

In 1881, a like application was made to Secretary Windom, and with like success.

In April, 1882, Secretary Folger requested the opinion of the Attorney-General, on the facts appearing in the papers accompanying the letter of request, as to the effect of the original award, and Hon. B. H. Brewster returned the opinion, on the facts assumed in it, that the old award was binding, and of full force.

In the Forty-sixth and Forty-seventh Congresses the claimants have had favorable reports in the Senate on the bill before us, the report being the same in both instances, and is No. 154.

In it the committee contents itself with reciting the substance of part

of the decisions in the Treasury only, and holding that the original award was binding and in full force, and adding that "the proof was *conclusive* as to the taking of the property by the officers of the government, under circumstances that appear to have justified such taking, and the government having received the benefit thereof in 1857," recommends the payment of the \$9,350.

It should here be stated that a foundation exists for the finding by the Senate committee that some of Porter's cattle were actually butchered for beef and used by the Army for food. Several affidavits were filed with the case before the committee showing that from forty to fifty head were so slaughtered and used at Camp Scott, and Porter's attorney urged before us that the fact that these cattle so used and not paid for gave color to the claim of actual impressment of the train, and that at least these cattle should be paid for.

An examination of the files of the Commissary-General's office shows that forty-eight head of cattle slaughtered at Camp Scott were paid for by Capt. U. F. Clarke, then commissary, to Livingston, Kincaid & Co., and Mr. Porter now says that he remembers that these were his cattle, and Livingston, Kincaid & Co., as his agents, settled for them, and he afterwards received the money. He withdraws all claim for such cattle, and that element is out of the case now. This subsequent refreshing of recollection on the part of Mr. Porter would tend to make conclusive the evidence of Captain Clarke and others, that all cattle slaughtered belonging to these freighters were at once paid for, or others equally as good furnished. This is not now disputed by any of these claimants.

This is the history of the case. The facts have been gathered at the expense of a great deal of labor and patient research, as the files of the Treasury Department—the original record of the case—cannot be found, after the most diligent search by the clerks, and the only apology made for the exhaustive and lengthy detail of proceedings is this statement.

For upwards of twenty years, incessant, unremitting efforts have been made to secure the payment of this and two kindred claims—those of J. C. Irwin and C. A. Perry & Co. They aggregate about \$100,000. They all arise out of the same state of facts, and on their merits are identical—absolutely so.

If the government owes either claimant anything it owes them all, and should pay all; the amount is not important, except on the question of care in the examination of the cases; and as the matter is now in the hands of the highest tribunal of the nation, all the facts should be before the Congress in determining the question of liability to the claimants; and in case this Congress should not act on the case, it is thought that the facts, as believed to exist, should be placed in such form on paper as to be accessible for future use.

Your committee do not deem it necessary to discuss the legal question as to the condition of the original award; reference to the subsequent decisions of the Third Auditor's office and law officers embraced in this report, coupled with the undisputed fact that the rehearing before Auditor Atkinson, resulting in the award of \$750, was, at the request of claimants, was a *de novo* hearing, and upon proofs old and new, arguments old and new, are conclusive that a trial, under such circumstances, is clearly a waiver of all rights under the old award and a bar to asserting any claim thereunder.

Nothing appears to show any opposition to a rehearing, or to the subsequent action of Atkinson, until it was ascertained that the award was cut down.

No argument appears to have been addressed to the question of the power of the Third Auditor to readjudicate, then, but all was, as the quantum of recovery.

On the merits of the claim, the only favorable decisions have been, that of Attorney-General Bates and the report of the Senate committee.

By reference to the opinion of Attorney-General Bates it will be seen that he predicates his conclusions on the assumption that "*at South Pass the train was arrested*, by an order of General Johnson, on the 19th of October, 1857," &c., and that subsequently the control of the property was by the military authorities, and not by the owners.

The fact is, as shown by the official reports, and not denied by the claimants (indeed not a shadow of proof to the contrary appears), that the train was stopped at Rocky Ridge, 30 miles east of the South Pass, by the claimants, on October 8 or 9, and for the purpose of claiming the protection of the military forces under Colonel Smith, which he extended to them, and which continued until winter quarters were reached. The only pretense at restraint is that, by the order of march, a place was assigned to these claimants. Their being with the Army was a matter of volition; they do not pretend that they asked or desired to return east, and, joining the column for the purpose of protection, they were bound to submit to the reasonable orders of the commander as to their location, and this was all they did.

Of these facts, absolutely controlling, Attorney-General Bates seems to have been wholly ignorant, but the references in this report taken from the records of the War Department, and not disputed in or by the evidence for the Porters, are conclusive.

The Senate committee's report is equally at fault. Instead of the proof being conclusive that the train of Porters was taken by the officers, it is conclusive that it was *not* so taken; it was never "impressed" into the service. Nor did the government "receive the benefit thereof in 1857," as by the report assumed.

It received no *benefit* from the train, but, *contra*, assumed the burden of the protection and of aiding it forward by sending the government teams to aid when, owing to the exhausted condition of the freighters' teams, they needed assistance.

These facts are clear in the record, and, without extending argument, only recapitulating action had, viz:

1. Third Auditor Atkinson, *adverse*, on presentation of the claim.
2. Attorney-General Bates (Op. 10, p. 21), *favorable*, on the assumption that the trains were arrested by Colonel Johnson, October 19, 1857.
3. Award of May 10, 1861, based on General Bates's opinion.
4. Secretary Chase's opinion *adverse*. Letter of November 3, 1863.
5. Award of April 16, 1864. Seven hundred and fifty dollars on the merits on a rehearing applied for by claimants, on additional proofs and reargument of the whole case, a trial *de novo*, and an award in express terms "in lieu of the award of May 10, 1861."
6. Decision of Third Auditor Wilson, March 9, 1865, on an application for a rehearing. *Adverse*.
7. Decision of Third Auditor, July 8, 1865, on call of Assistant Secretary Chandler, "that the bar of the first award was removed by the application for and the rehearing."
8. Mandamus in the Supreme Court, July 29, 1865. *Adverse*.
9. Opinion of Solicitor Jordan, June 30, 1868, that old award was valid; but on this was taken—
10. Attorney-General Hoar's Opinion (13 op. A. G., p. 9), and he held *adversely*. March 27, 1869.

11. Court of Claims. April 14, 1870, to January 18, 1875. *Adverse.*
12. Solicitor of the Treasury Banfield. November 22, 1873. *Adverse.*
13. Banfield's decision approved by Secretary Richardson.
14. Solicitor Wilson. *Adverse.* September 21, 1874.
15. His opinion indorsed by Hon. B. H. Bristow, Secretary of the Treasury.
16. Application to President Grant, February 24, 1877. Referred to Secretary for action on its merits.
17. Assistant Secretary French. March 1, 1877. *Adverse.*
18. Approval of French's decision by Secretary Sherman, after full argument by J. J. Stewart and J. T. Pickett, attorneys for claimant.
19. Application to refer to Attorney-General, April 20, 1877, refused by Assistant-Secretary French.
20. This approved by Secretary Sherman.
21. Application to Secretary Windom to reopen. 1881. Refused.
22. Application to Secretary Folger, December, 1881, to reopen on additional proofs, refused.
23. Opinion of Attorney-General Brewster, May 4, 1882, on facts as stated, favorable, but the opinion is remarkable in assuming, as important, that which does not appear by the records of the department, and entirely ignoring the facts connected with the second award and subsequent departmental action.

We agree with the conclusions, so often arrived at, that the second award was valid; that it bound the claimants; that the first award was legally and properly superseded by the second. So that the claim may be here examined on its merits.

As to this, we agree with Attorney-General Williams (13 Op. Attorneys-General, p. 137) and Solicitor Banfield, January 4, 1871, that the facts do not make a case of impressment under the law as laid down in *Harmony vs. Mitchell*, cited. And therefore the claimants are not entitled, either in law or upon equitable grounds, to payment beyond what they have received, and so recommend that the Senate bill do not pass, and that it lie upon the table.

APPENDIX A.

WASHINGTON, *March 26, 1864.*

DEAR SIR: Inclosed you will find some additional testimony in the case of J. & R. H. Porter. Allow me to request your speedy action in the case.

Yours respectfully,

R. H. PORTER.

R. J. ATKINSON, Esq.

APPENDIX B.

WASHINGTON, *April 6, 1864.*

SIR: I beg leave to call your attention to the inclosed letter to me from the Secretary of the Treasury. Having understood from Dr. Porter that the indorsement mentioned by the Secretary was thought to be an impediment in the way of your settling the case, I deemed it necessary to procure this paper in explanation of the views of Mr. Chase, and in order to enable you to act without any embarrassment whatever.

Very respectfully,

FRED P. STANTON.

Hon. R. J. ATKINSON,
Third Auditor of the Treasury.

H. Rep. 1637—3

APPENDIX C.

TREASURY DEPARTMENT, *April 4, 1864.*

SIR: If there is anything in my indorsement upon the papers of J. and R. H. Porter which is of such a character as to prevent the Third Auditor from reconsidering the matter and deciding according to his own judgment, it does not express my intention.

My purpose in the indorsement was to state the reasons which in my opinion required me to decline signing the warrant, while recognizing the right of the Auditor to decide finally upon the claim. I should not have declined to sign the warrant had the decision of the Auditor been supposed by me to express his own judgment, uncontrolled by the opinion of the Attorney-General.

You are at liberty to show this letter to the Auditor.

Very respectfully,

S. P. CHASE,
Secretary of the Treasury.

Hon. F. P. STANTON,
Washington, D. C.

○

C. A. PERRY & CO.

JULY 15, 1882.—Laid on the table and ordered to be printed.

Mr. PAYSON, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 955.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 955) to authorize the Court of Claims to hear and determine the claim of Charles A. Perry & Co., having had the same under consideration, respectfully report:

The relief desired by the parties named in the bill is that the Court of Claims be authorized and directed to hear and determine the matter of their claim upon certain papers and proofs in the Treasury Department, and such other testimony as either party shall produce.

The claim was for \$57,650 for compensation for claimant's property alleged to have been impressed into the military service of the United States, and to have been lost while so in such service, in the fall and early winter of 1857, during the operations against the Mormon rebellion by the forces under the command of Col. Albert Sidney Johnston.

The case is identical on its merits with the case of J. & R. H. Porter, Senate bill No. 905, now before this committee, and as the facts have been recited at length in the report in that case, reference is made to that report for them to save repetition here; but as the relief desired is that a *status* be given the case and parties in the Court of Claims, a history of it, as well as the department action as to it, is deemed necessary.

The claim was presented to the Third Auditor in February, 1868, and under the act of March 3, 1849 (sec. 3483 of R. S.), which authorized the Third Auditor to adjust any claim made by a "person who sustains damage by the loss or destruction of any mule, ox, or wagon * * * while such property is in the military service, either by impressment or contract," &c.

Until 1866 the Third Auditor was the only officer authorized to adjust such claims; but by act of July 28 of that year (14 Stat., p. 327) the Second Comptroller was given supervisory power over the Third Auditor and the concurrence of these officers necessary.

Proofs were filed, as shown by the accompanying pamphlet, and on February 3, 1869, the Third Auditor made this decision, and forwarded it to Hon. J. M. Brodhead, Second Comptroller, for his judgment:

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,
February 3, 1869.

SIR: I herewith submit for your consideration a claim presented under the act of March 3, 1849, by Messrs. C. A. Perry & Co., for compensation for their property alleged to have been impressed into the military service of the United States and to have been lost while so in such service.

They claim for—

560 head cattle, at \$80.....	\$44,800
34 head mules, at \$150.....	5,100
5 head horses, at \$150.....	750
35 wagons, at \$200.....	7,000
	57,650

They allege that in August, 1857, their firm, composed of Charles A. Perry, Elias H. Perry, and John D. Harper, were engaged in mercantile business at Salt Lake City, Utah; that about August 13, 1857, they started four trains from Fort Leavenworth, Kans., for Salt Lake City, loaded with merchandise for themselves, the trains belonging to them, and consisting of 750 head cattle, 37 mules, 7 horses, and 63 wagons; that the trains proceeded safely until they reached Rocky Bridge, near the South Pass, when Colonel Johnston, commander of United States forces, issued an order as follows:

HEADQUARTERS ARMY OF UTAH,
South Pass, en route to Salt Lake City, October 19, 1857.

SIR: The colonel commanding directs me to inform you, in reply to your letter of to-day, that no goods or supplies of any kind will be permitted to pass the Army for Salt Lake City or other point in possession of the Mormons, nor any communication whatever to be had with them so long as they manifest a hostile attitude to the Government of the United States.

To J. C. IRWIN, Esq.

F. J. PORTER,
Assistant Adjutant-General.

They allege that by this order, and other orders issued immediately after, their trains were compelled to remain with General Johnston's army; that their trains were not allowed to go in advance or to one side, or to return, or to separate in any manner from the army; that their stock were mixed with and used indiscriminately with stock of the United States trains for the purposes of the United States; that this state of affairs continued from the date of the order above stated until the arrival of the army and trains at Camp Scott (Fort Bridger) on November 26, 1857; that this constituted an impressment of their trains into the military service of the United States; that during this period of impressment the animals were congregated in so great a number that it was impossible for them to procure sufficient forage, and that the United States entirely failed to furnish any forage for them. They also allege that the merchant trains were subjected to strict discipline, were assigned their places in the order of march, and received their orders of march from the army officers; that as all the trains were compelled to hitch up and fall into order at the hour specified by the army officers, often the rear trains were compelled to stand under yoke from early morning until 2 or 3 o'clock p. m. before they could start, and then had to travel until late at night, and therefore had but little time to graze upon the little grass which had been left by the forward trains. And I understand from the petition that these claimants allege that the latter state of circumstances operated chiefly against the merchant trains, on account of their having been required to keep the places assigned them in the rear of the government trains. This allegation certainly seems somewhat inconsistent with their sweeping allegation that the stock of the merchant trains were mixed with and used indiscriminately with the stock of the government trains for the government purposes; but both allegations appear to be distinctly made by the petition.

They claim that these causes occasioned the losses of the stock as above stated, and that, in consequence of such losses, the number of wagons above stated were necessarily abandoned and wholly lost on the road, by order of Colonel Johnston.

As to the number of cattle which were lost there is now no competent evidence. Three witnesses, Harper, Davidson, and Kitchen, have testified upon the subject, but in the affidavit of each an erasure and substitution is apparent, both as to the number of cattle which started in the trains and the number which were lost.

The explanation made by Mr. Denver (see brief) can be accepted only so far as his personal knowledge extended, viz, that he drafted the affidavits and filled in the original numbers; that the numbers were fixed by him from data furnished by Charles A. Perry, one of the claimants; that the affidavits were then sent to be sworn to by the witnesses; and that they were returned in their present condition to Messrs. Hughes, Denver & Peck, but as to when, where, why, or by whom the alterations were made he does not claim to have any personal knowledge.

Should it be deemed necessary to determine exactly how many were lost, further evidence should be required.

A brief of the evidence offered by claimants, containing also extracts made by this office from testimony on file in the claim of J. & R. H. Porter, accompanies this report and is made part hereof.

It appears in the history of this case that shortly prior to October 19, 1857, merchant trains belonging respectively to three parties, Messrs. Irwin, Porter, and these claim-

ants, arrived near Rocky Bridge, about 30 miles east from the South Pass, *en route* for Salt Lake City. Exactly at what time claimant's train arrived does not appear. General Johnston's statement (see brief) shows that the Irwin and Porter trains arrived there about the 8th or 9th October, and that the Perry trains were there when he arrived (October 15, 1857). It also appears from his statement that the news had then reached the merchant trains of the hostile acts by the Mormons, of their having burned three government trains on the borders of Utah, and of the proclamation issued September 15, 1857, by Brigham Young, forbidding all persons to enter the Territory. General Johnston states that this news had caused the halt of the merchant trains near Rocky Bridge (where there was then a small detachment of troops); that this halt was made because the conductors apprehended a like fate for their trains if they entered Utah; that the halt was "an imperious necessity and wholly unavoidable"; and that otherwise, conductors as experienced and skilled on that route as Mr. Irwin would not have delayed the march an hour at that late period of the year.

General Johnston came up on October 15, and found these trains all halted at that camp (near Rocky Bridge), near Col. C. F. Smith, who had taken position there with the detachment (above referred to) of 50 men of the Tenth Infantry, to await the concentration of the government trains, and to give all the protection he could to them and others. Immediately on General Johnston's arrival he ordered Colonel Smith to advance to South Pass, and there await reinforcements, while Johnston remained back.

The trains of Irwin, Porter, and these claimants followed the movement of Colonel Smith, and on October 17 encamped on the Sweetwater, $2\frac{1}{2}$ miles from South Pass.

During all this time and up to October 19, 1857, it is not claimed that Colonel Johnston had in any way interfered to control any of the merchant trains. They had halted at Colonel Smith's camp on their own judgment, and because they feared to go in advance of the Army, lest the Mormons should destroy their trains, and they followed Colonel Smith's advance to South Pass of their own volition.

Indeed, it would seem that the order (if it could be so called) of October 19, 1857, dictated no different course to those trains than they were before that time pursuing and then seemed desirous still to pursue; and I think, as Colonel Johnston remarks, that there is no room for doubt that such a course was necessary for their own safety. Under these circumstances, then, General Johnston wrote his letter of October 19, 1857, which these claimants allege to have constituted an impressment of their property into the military service.

That letter was not an independent order issued by Colonel Johnston on his own motion, but merely a reply to some letter of inquiry addressed by Mr. Irwin to him. It might be asked how such a letter concerned *claimant's* trains, but Colonel Johnston himself states that it was intended to apply to all the merchant trains.

This letter merely stated that Colonel Johnston would not permit any goods to pass the Army for any point in possession of the Mormons, or any communication to be had with the Mormons.

It did not contemplate the taking of any part of any of the merchant trains for the service of the government. It did not even, in its terms, require the merchant trains to remain with the Army; and the reason for the latter omission is obvious. These trains had already halted to await the motions of the Army, and when the advance of the Army had moved to South Pass they had voluntarily accompanied it and encamped there under its protection, thus clearly signifying that it was their wish to remain with the Army for their own safety. Therefore Colonel Johnston deemed it unnecessary to make an order that the trains should remain with the Army, because he understood that they had no other desire or intention. I believe that he did not regard this letter as an order, and that he would not have caused it to be written if Mr. Irwin had not made some inquiry which drew this out as a reply. I know that he states that *if they had proposed, for example, to winter at South Pass or to return*, he would have forbidden it, because of the danger of capture by the Mormons; but it is evident to me that, as he understood that they *did not so propose*, but desired, on the contrary, to remain with the Army, he considered an order unnecessary on the subject. The fact that he would not have permitted them to leave the Army if they had desired it by no means raises any presumption that they did so desire; on the contrary, the very absence in his letter to Irwin of any such restriction indicates that Irwin's inquiry expressed no such desire, and when coupled with the course previously pursued by these trains, points directly to the conclusion that it was then known that they had no such desire. Moreover, Colonel Johnston has certainly evinced in all his letters an earnest desire to give to the proprietors of those merchant trains all the benefits that could accrue to them by the most full and impartial statement of the whole matter; but in no statement does he admit that application was ever made to him on the part of any of them to be allowed to winter at South Pass or return, but merely states as a hypothesis that he would not have permitted such a course if they had proposed it.

Nor do I find that these claimants, either in their petition or in the testimony offered by them, make any claim that they ever asked to be allowed to winter at South Pass

or to return. They do assert that Colonel Johnston would not have granted the permission, but they do not assert that they either asked or desired it. Their witnesses, Harper, Davidson, Kitchen, and White, do say that Colonel Johnston would not allow the trains to go in advance or return, or to separate from the column; but no one of them pretends to have ever heard any permission asked of or refused by Colonel Johnston for the Perry train, or any of the merchant trains, to either winter at South Pass or return. They therefore do not appear to be competent to say that the non-wintering or the non-returning was not owing quite as much to the fact that the conductors had no desire to do either as to the fact that Colonel Johnston would not have permitted either if either had been desired. Nor do they pretend so to say; they merely state that Colonel Johnston would not allow the trains to separate from the Army (and for this statement, however true in fact it may be, they had no sufficient means of knowledge), but not that the train managers either asked or desired it.

(As to the allowance with which the testimony of Harper, Davidson, and Kitchen should be taken, I refer to the remarks made upon their testimony in a subsequent part of this report.)

If I am right in the conclusions I have thus far drawn from the testimony, it appears that Colonel Johnston, even if his letter of October 19 be considered as a peremptory order, did not, in merely requiring these trains to advance with the Army, enforce upon them any different course than they would of their own accord have pursued, and only compelled them to do what they intended and desired to do without compulsion.

Then his letter of October 19 produced no effect as an order, and these claimants would have no right to complain of it, because they suffered nothing by reason of it.

But if I am incorrect in my conclusions, and if it shall be considered that the evidence shows that the managers of these trains did desire, not to advance with the Army, but either to winter at South Pass or return, and that by this letter they were prevented from doing either, then I do not believe that such a degree of restraint amounts to an impressment within the intention of the act of March 3, 1849.

For, considering the case merely upon such a prohibition, and without taking into account any subsequent transactions, no appropriation of property was contemplated, no service required, or no benefit sought for the United States. It was merely a prohibition that citizens should do with their property what would probably have aided rebels in their resistance to lawful authority.

That such is the duty of every citizen without compulsion, that it is the right of the government to enforce such duty by compulsion, and that there is no law to assess damages against the government when it is obliged to resort to compulsion to enforce such duties, are all propositions which no right-minded man will attempt to deny.

The prohibitory right of the government in such a case stands upon the same footing with its right to confiscate goods which are being smuggled through army lines to an enemy's camp, viz, to prevent its citizens from either designedly or ignorantly using their property to aid enemies or rebels.

It remains, then, to consider only one more proposition.

The claimants assert that from October 19, 1857, until November 26, when the Army and the trains arrived at Camp Scott (Fort Bridger), their stock was mixed with and used indiscriminately with the government stock, and they therefore claimed compensation for the losses, sustained by them during that period.

I have before briefly referred to the inconsistency which exists between the two theories maintained by them. They claim that their great losses of stock were occasioned by their trains being kept (with the other merchant trains) in the rear, and therefore being kept so much of the time under yoke, that their stock performed more labor and had but little time to graze upon the little grass which was left by the forward trains; but they also claim that their stock were all this time used indiscriminately with the government stock. Now, both these conditions could not exist at one and the same time. Either they were used indiscriminately with the government stock, in which case they would have had the same labor and the same chances for grazing, and would thus have suffered about the same proportion of loss, or they were kept separate and in the rear, in which case it would be very natural that the loss from insufficient grazing should fall almost exclusively upon the animals of the merchant trains.

In support of the theory that during all this period the stock of the merchant trains was used indiscriminately with the government trains for government purposes claimants offer three witnesses, Harper, Davidson, and Kitchen.

But these three each testify also in support of the other theory, viz, that the reason of the great losses by the merchant trains was the fact that they were kept in the rear. There is therefore the same discrepancy in their testimony which was so apparent in the petition.

But, further than this, the affidavits of these witnesses are not only *ex parte*, but they were drafted, not at the dictation of the witnesses themselves, but entirely upon the statements of one of the claimants, and who had not even himself a personal knowledge of the transactions.

I do not mean by this remark to imply any censure towards Mr. C. A. Perry, nor to doubt in any degree the probity of these witnesses; but when testimony is of this character justice to the government demands that it be taken with such grains of allowance as experience dictates. Of course, even in this manner of taking testimony, no honest claimant would insert in an affidavit any statement which he knew to be false, nor would an honest witness be easily deceived into subscribing the affidavit if it contained a direct statement known to himself to be false. But in a case where neither the claimant nor his witnesses has any intention to deceive, experience has shown how often the claimant will carry his own version (fully believing it) into the affidavit, and how often the witness will readily subscribe the affidavit, because he sees nothing in it which he supposes to be false, without distinguishing even in his own mind between things personally known to him and those of which he has only loose impressions. This is especially true in the case of persons not habituated to giving testimony. Therefore, when testimony is taken without cross-examination, and without even the check of having the statement made at the dictation of the witness himself, much allowance should be made in weighing it. In the present case this is especially proper, because these affidavits are not only inconsistent in themselves, but are also opposed to many probabilities and to the great weight of the evidence.

On the other hand, Alfred R. White, who was in charge of one of Porter's trains, and whose testimony is offered by these claimants, explains the circumstances in detail. He shows that the merchant trains were assigned each its own position and entirely in the rear of the Army and its trains. He shows how strictly they were held to that order by rigid military discipline. He shows how the great losses of stock by the merchant trains were owing to the fact that they were so kept in the rear of a column which stretched out eight or ten miles. He explains that *all* the trains were compelled to fall in each morning at an hour which was daily designated by the commanding officer; that the merchant trains, being kept entirely in the rear, were kept standing some hours before they could start; that they then had to travel late at night to make the day's march; and therefore, that they not only had but little time to graze, but also found the grass almost entirely consumed by the trains in advance, which belonged to the government. And he states that this state of things continued from South Pass to Camp Scott. It is true that he, too, makes the general statement that the stock of the merchant trains was used indiscriminately with that of the government trains; but his detailed statement above quoted and his testimony in the Porter case show clearly that he does not mean that such was the *custom* during this whole period. In his affidavits in the Porter case he states that "before reaching Fort Bridger so many cattle had perished that the surviving stock was used indiscriminately, without regard to ownership." And against the whole theory that there was any promiscuous mixing up of the merchant stock with the government stock the presumptions are strong and the direct evidence weighty.

I have before shown that Colonel Johnston's letter of October 19, 1857, contemplated nothing of the kind. The statements of all the officers show that each train was assigned its place, and was by the most rigid discipline required to keep that place. The military orders not only did not authorize or require any such mixing, but their direct tendency was to prevent it.

Captain Dickerson, the quartermaster, who had charge of all the trains, both public and private, states that the order of march was: First, the headquarters and regimental trains; next, the supply (contractors') trains; and last, the merchant trains; that the entire train stretched out 8 to 10 miles, throwing the merchant trains far in the rear. He states that General Johnston daily gave to him the order fixing the time of march; that he (Dickerson) each evening gave it to those in charge of each train; and that it was his duty to see that each train was started in its proper place in column. And all this was after November 3, for General Johnston did not come up (bringing the trains with him) to where Captain Dickerson was until that date.

Charles D. Schmidt (Captain Dickerson's clerk) states that when General Johnston came up (November 3), bringing the trains with him, he distinctly remembers that the Irwin and Porter trains were in the rear of headquarters and regimental trains; and also states that in consequence of such position the losses of those trains were greatly increased over those of the trains in front.

It is unnecessary that I should refer in detail to all the testimony upon this point.

The petition itself assigns (as I understand that paper) as a reason for the great losses of the merchant stock that the rear trains were under so many more disadvantages than the forward trains. Claimant's witnesses, Harper, Davidson, and Kitchen, all say the same. Their witness White shows in detail and most explicitly that such was the fact; the Army officers say the same; and so also do the witnesses in the Porter case.

There are some statistics which show conclusively that the merchant stock was not mixed indiscriminately with the government stock, and thus subjected to the same advantages and disadvantages.

The claimants allege that their trains contained, on starting from Fort Leavenworth,

794 animals; they allege that 634 were lost from South Pass to Camp Scott, being about four-fifths of their whole number.

For the purpose of ascertaining what loss the government stock suffered, I caused the accounts of Captain Dickerson to be examined, as he had charge of all the trains. The entire number of public animals used by him for this expedition was 1,095, out of which he lost only 129, this number being the total lost by him during the entire quarter (October, November, and December, 1857) and from every cause. Probably *all* these were not lost between South Pass and Camp Scott, but assuming that they were, then his entire loss was less than one-eighth, while claimants allege that *they* lost in the same period four-fifths.

What was the cause of this enormous disparity? Claimants allege that this stock was in good condition when they arrived at South Pass, and the evidence bears out the assertion.

The explanation of this disparity is to be found only in the fact that the United States trains (headquarters and regimental) were in advance, while next came the supply (contractors') trains, and then far in the rear the merchants' trains, and the entire train stretched out 8 to 10 miles. Thus the United States could start promptly each morning without awaiting the movements of any other trains, and could make the day's march without hindrance. They not only had less labor and more time to graze, but they had also the great advantage of the first chance at whatever grazing there was. The fact that they left any grass for the rear trains shows that they generally got sufficient for themselves.

The affidavits of Alfred R. White and the statements of Lieutenant Maynadier, Captain Dickerson, and Captain Tracey afford to me some explanation of the true basis for the loose and general statements by some of the witnesses that the stock of the merchant trains were used indiscriminately with the government stock.

It appears that shortly before the column reached Fort Bridger (Camp Scott) the animals had become so reduced that it was necessary to move the wagons by detachments, first moving the wagons in front and then sending back the animals from the trains in advance, according to their strength, to move the wagons in the rear.

This appears to have been the only mixing that occurred, nor was this done in the promiscuous manner which the loose statements by some of the witnesses would seem to imply, and which they speak of as though it began at South Pass and continued to Camp Scott.

Up to this time in the history of this case I have failed to find anything approximating to an impressment, nor do I now find it.

It is not proved, nor even asserted, that the conductors of any of the merchant trains protested or objected, and it would have been most strange if they had. This was a measure adopted for the common good. It is apparent that it inured far more to the benefit of the merchant trains than any other. It has already been shown how slight had been the loss by the United States trains, and for the same reason the *surviving* stock of those trains must have been in much better condition than the few surviving stock of the merchant trains. Under such circumstances it is not difficult to determine which of the two, the merchant trains or the United States trains, were benefited most by this kind of mutual assistance.

But even if it had been shown that the claimants' agents had protested against this course, it would still be necessary for claimants to show that some of their cattle had been used to haul United States wagons. There is not a particle of evidence to show that any of *their* animals were so used. It is true that there are general statements that the stock of *all* the trains were used at this time and in this emergency indiscriminately, and without regard to ownership; but this would not prove that a single animal of C. A. Perry & Co.'s trains had ever been hitched to a government wagon.

But supposing even this difficulty to be removed and it to be shown that some of *their* animals were so used, then it would still be incumbent upon claimant to show that any (and if so, how many) of the cattle were lost while thus used. The accounting officers will not presume such losses without evidence and in the face of the fact so apparent that this kind of mutual assistance tended not to injure but to assist the merchant trains.

Before closing this report two points shall be briefly alluded to:

1st. The prices claimed for the cattle are higher by about \$15 per head than White and Haller (employés of Porter's train) appraised the Porter cattle.

As these estimates are made upon two large lots in similar condition, the same estimate would seem to be fair as to each.

2d. I cannot see how in any event any wagon could be paid for. It is not shown (nor, I believe, even claimed) that any wagons belonging to these claimants were ever used for government purposes. It is simply claimed that, in consequence of the impressment and loss of the cattle which otherwise would have drawn them, they were necessarily lost. This is a loss merely consequential, and might perhaps be a basis for a claim for damages, but such a claim could not be entertained by the accounting officers.

The only question in this case is, were these wagons and animals in the military service of the United States?

They were not so by any contract; and the next inquiry is, did all the circumstances amount to an impressment? The attorneys for claimants rely upon an opinion given by the Attorney-General in the case of James and Richard H. Porter. The facts in both cases are nearly identical. The opinion of Mr. Bates was based to considerable extent upon an *error in fact*. The trains were not arrested at South Pass by General Johnston.

As above stated, they had halted 30 miles east from South Pass under the protection of Colonel Smith's command, because they had there received intelligence of the hostile acts of the Mormons, of Governor Young's proclamation forbidding persons to enter the Territory, and of the burning by the Mormons of three government trains, and they feared a like fate for their trains if they moved in advance of the army. They waited at that camp several days, and until General Johnston came up, October, 15; and then, when he immediately sent Colonel Smith forward to the Sweet Water (21½ miles east from South Pass), they followed Colonel Smith and encamped on the Sweet Water under his protection (October, 17). They had certainly not, up to this time, been detained by General Johnston; and, as stated by General Johnston, gentlemen having the experience of those in charge of these trains would not have lost that amount of time at that season of the year without cogent reasons for it.

General Johnston's so-called order of October 19, 1857, was an answer to a letter of the same date addressed to him by Mr. Irwin. Mr. Irwin's letter has not been produced, and, of course, its contents or bearing upon General Johnston's reply are not known. General Johnston's reply, however, was anything but an impressment. It simply stated that no goods or supplies of any kind were to be permitted to pass the army, for Salt Lake City, or other point in possession of the Mormons, so long as they manifested a hostile attitude to the United States.

It would be a singular principle to hold the government responsible for property because they refused to permit it to be furnished to an open public enemy. General Johnston's letter was perfectly right, in view of the condition of the affairs at the time and place, and cannot by any possibility be construed as in any manner taking the property for the use of the government.

It will be seen that the affidavits (of Davidson, Kitchen, and Harper), which state that claimants' cattle, horses, and mules were mixed with and used indiscriminately with those of the quartermaster trains for hauling government supplies, relieving government animals, and supplying the places of those which died, were prepared in this city from the statements of one of the claimants, who was not present, but derived his information from what he no doubt considered authentic sources, and were signed by the witnesses without cross-examination.

The facts as shown by the testimony correct their statements in those particulars. The testimony shows that these merchant trains were in the extreme rear of a line several miles long, and hence their suffering from want of forage. It shows that very few of the government cattle were lost, while a great portion of the merchant cattle died. And it necessarily follows that if there was an indiscriminate use of the cattle, it must have been those belonging to the government that were used to help the merchant trains. It has not been shown that any one of the cattle belonging to the merchant trains aided in hauling the government trains, or that any one of the wagons belonging to the claimants was used or employed in the service of the United States. (It does not appear to be even *alleged* that any of the wagons were so used.)

As it is thus shown conclusively to my mind that the action of General Johnston was perfectly right, under the circumstances; that no part of this property was in the service of the United States by contract or impressment, there is no authority of law for an allowance of the claim, or any part of it, by the accounting officers of the Treasury.

If Congress see proper to grant these parties relief for the loss of their property, caused by the Mormon rebellion, they can do so, but the claim is clearly not within the jurisdiction of the accounting officers.

Respectfully submitted.

JOHN WILSON,
Auditor.

Hon. J. M. BRODHEAD,
Second Comptroller.

On March 31, 1869, that officer (Second Comptroller) having considered the case, returned the papers with an opinion, concurring in the conclusions of the Third Auditor. This opinion is as follows:

TREASURY DEPARTMENT,
SECOND COMPTROLLER'S OFFICE,
March 31, 1869.

SIR: The report of the Third Auditor on the claim of C. A. Perry & Co. for losses of cattle, horses, mules, and wagons, while in the military service of the United States, has been received.

The circumstances of the case and the evidence and statements on file satisfy my mind that there was no design on the part of Colonel Johnston or other United States officer to impress the train of claimants or any of the animals into the military service.

It was the misfortune of the owners of the train that they found themselves so situated on the borders of Utah in the beginning of winter, with the cold intense, the ground covered with snow, and a hostile horde of lawless thieves and robbers before them, who had just been engaged in the robbing and destruction of similar trains, and the murder of large numbers of persons, including women and children, who accompanied them.

There was apparently no possibility of their being able to go with safety to their destination, unless they were in full accord and sympathy with the public enemy and willing to afford them aid and comfort.

In this situation the military expedition under command of Colonel Johnston, moving on Utah and Salt Lake City, found them, and, in the language of Colonel Johnston, "in view of the hostile spirit manifested by the Mormons (I) he conceived it to be (my) his duty to prevent all intercourse with them by which they could receive information or aid and comfort in any form," and therefore forbade the merchant trains from moving in advance of the army, but required them to keep in the rear and move as directed, &c.

He further says that his order and the instructions as to the conduct and position of the merchant trains show clearly "*that the object was to prevent them from falling into the hands of the enemy.*" And again he says that, "*while there was no desire to take the property out of the hands of the owners or carriers, no measures would have been intermitted to prevent the property from falling into the hands of the Mormons.*"

The action of this officer was in the nature of a precautionary police regulation, intended as well for the protection and benefit of the merchant trains as for the enforcement of the belligerent rights, &c., of the government. It was evidently so understood and acted upon by the train-owners.

After starting, and when the animals both of government and contractors' and merchants' trains had become still more reduced from want of proper forage, the merchant trains suffering most on account of being in the rear, it seems that the animals of the merchants' trains were used at times, to use the words of witnesses, "indiscriminately" with those of the quartermaster's trains in "*hauling public and private wagons.*"

This was not such a use as would place the animals of the merchants' trains in the military service as contemplated by the act of 1849. It was a mere interchange of kindly services. In all probability they "doubled teams" to help each other along, a plan well understood on the plains when there is a deficiency of animals to move all the wagons at once.

Besides, no quartermaster or other government employé ever reported the services of the animals or recognized the services, nor has there ever been a claim presented for the same. No person at the time considered the animals of the merchants' trains in the military service, but the freight of the merchants and owners was carried along under this military escort, and part of the time evidently transported by the aid of government cattle and mules.

It is true that the claimants suffered great damage by the death of animals and loss of wagons on the trip. But such losses have frequently occurred on the plains where there has been no military interference to attribute it to. And I very much doubt whether the losses ascribed in this case to the order of Colonel Johnston and the acts of the military would not have occurred, and, indeed, been greatly aggravated, had the army not been present.

It is, in fact, a question whether the owners would not have lost everything, including life, had it not been for this military protection. To have gone forward into the enemy's country, then under martial law, would have been certain destruction. And to attempt to winter at South Pass or to return would have placed it in the power of the Mormons to capture or destroy them as stated by Colonel Johnston.

In no possible view of the case can I see any authority in the accounting officers to settle the claim.

I therefore concur in the finding of the Third Auditor that the claim must be disallowed.

I return all the papers.

Respectfully, your obedient servant,

Hon. R. W. CLARK,
Third Auditor.

J. M. BRODHEAD,
Second Comptroller.

Deeming the above a proper case within the provisions of the act of June 25, 1868, to be transmitted, with all the vouchers, papers, documents, and proofs pertaining thereto, to the Court of Claims for trial and adjudication, I hereby recommend such transmission.

J. M. BRODHEAD,
Second Comptroller.

These opinions meeting severe criticism by the attorneys for claimants, especially as the order of October 24, 1857, of Colonel Smith (Orders No. 36) fixing the order of march of the column from South Pass to Camp Scott, and set out at length in the report in the Porter case, did not receive the attention it was thought it deserved, the Second Comptroller again personally examined the case, and on April 26, 1869, wrote to the Third Auditor in reference to it, concluding his letter:

Considering, however, the diversity of opinion as to the legality of the claim, the large amount involved, and the long time since it originated, I desire a judicial decision upon it, and I therefore recommend that, under the provisions of the act of June 25, 1868, it be transmitted, with all the vouchers, papers, documents, and proofs pertaining thereto, to the Court of Claims for trial and adjudication.

The Second Comptroller expressed similar views to the Secretary of the Treasury in a letter to that officer on May 10, 1869, inclosing all the papers; but the attorneys for the claimant, having doubts as to the jurisdiction of the court, requested, instead, that the case be referred to the Attorney-General for his opinion as to whether there was, legally, an "impressment" of claimants' property. This was by letter of May 15, 1869.

The Secretary of the Treasury, Mr. Richardson, as well as Mr. Brodhead, assented to the proposal, and the case was sent to Attorney-General Hoar on May 30, 1869.

On July 6, 1869, Mr. Hoar addressed a letter to the Secretary of the Treasury declining to go through the papers in the case and settle questions of *fact*, but assured the Secretary that if the Treasury Department would settle and digest the facts, he would be glad to give an opinion on such a statement.

On July 8, 1869, the attorneys for the claimants addressed a note to Mr. Boutwell, referring to the action of Mr. Hoar, and concluding:

We have the honor now to request that the case may go to the Solicitor of the Treasury, either for the preparation of the required statement of facts, which can be better made up by a professional lawyer, or for a report and decision of the whole case.

We are entirely willing to abide the opinion of any law officer of the government.

HUGHES, DENVER & PECK,
Attorneys for C. A. Perry & Co.

On the 9th of July, 1869, pursuant to the above request, the whole case was referred to the Solicitor of the Treasury for a decision.

Some correspondence was had between these officers as to the case not deemed necessary to digest here, but on January 4, 1871, Mr. E. C. Banfield returned the paper with his decision, which is as follows:

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., January 4, 1871.

SIR: I herewith return the papers in the case of Charles A. Perry & Co., which were referred to this office for an opinion upon the question whether or not the facts made a case of impressment under the act of 1849, so that the claim might be properly allowed by the accounting officers of the Treasury.

It seems that the claim has once been disallowed, both by the Third Auditor and the Second Comptroller.

I am of the opinion that the facts presented do not make out a case of impressment under the law as laid down in the case of *Harmony vs. Mitchell*.

I therefore regard the original conclusion of the accounting officers to be correct, and see no remedy for the claimants, unless they can obtain it in the Court of Claims or before Congress.

I am, very respectfully,

E. C. BANFIELD,
Solicitor of the Treasury.

Hon. GEORGE S. BOUTWELL,
Secretary of the Treasury.

[Indorsement.]

Respectfully referred to the Second Comptroller.

J. H. SAVILLE,
Chief Clerk.

Filed December 11, 1872.—J. R. No. 52.

Application was then made by the claimants for the opinion of the Attorney-General. That officer, on November 19, 1872, prepared an elaborate opinion (14 Op. Attorney-General, p. 137), in which he says:

That it is apparent that the government did not need additional transportation or supplies beyond that they had, and that these merchant trains were an incumbrance, and not an aid to the expedition. All the property was under the charge of the owners, their agents and servants, and neither the agents nor the property in their charge were engaged in any service or in any manner employed or used in connection with the operations of the Army.

He reviews *Harmony vs. Mitchell* (13 How., 115) and Attorney-General Bates's opinion (10 Op., 21), and concludes:

I cannot avoid the conclusion that the claimants in this case, finding themselves obstructed in their way to Salt Lake City by the hostility of the Mormons or the order of Colonel Johnson, or both, concluded that their best course under the circumstances was to join and accompany the Army; and that they now seek to make the government responsible for the early and unexpected storms of winter, which were alike disastrous to public and private property.

And so holds against the claimants.

The claimants then desired that the case be sent to the Court of Claims, and on December 9, 1872, the Secretary of the Treasury, on their application, sent the case to that tribunal, where all the papers were filed December 11, 1872, as they now desire.

Under the practice in that court, a claimant is required to file a formal petition, the original pleading in the case, within the time prescribed by rule.

The case was regularly docketed, and stood, without any steps being taken by the claimants to file a petition, or by the government, until February 19, 1876, when the Attorney-General entered a motion to dismiss the proceeding for want of a petition, and the attorneys of claimants were duly notified. No attention was paid to this.

On December 22, 1876, a similar motion was made, and the claimants and attorneys duly notified, and no attention given.

On February 20, 1878, like motion and notice to claimants and attorneys, and with like results.

On May 13, 1878, on motion of the Attorney-General, no steps being taken by claimants, the proceeding was dismissed for want of prosecution, after a pendency in that court of five years and five months.

No reason is assigned by the attorney for the claimants for the failure to take steps to procure an adjudication in the Court of Claims while the case was there, although his attention has been specially called to the point, nor is any authority shown in support of the merits of the claim, except the opinion of Mr. Bates (10 Op. Attorney-General, p. —), which, as shown in the report in the case of Porter by this committee, is based on an erroneous supposition, viz, "that the trains were arrested" at South Pass on October 19, 1857, when, as a fact, they had halted 30 miles east of there on October 8 or 9, under protection of Colonel Smith, which protection they sought, after hearing of the destruction of the trains west of them on Green River, fearing a similar disaster to themselves. They followed Colonel Smith to the Sweetwater, and were all the time under his protection until Colonel Johnston arrived on the scene.

These parties have had the benefit of every tribunal where the case

could be heard. It appears to have been thoroughly and patiently examined. The department decided against them. Their attorneys expressed a willingness, after the adverse decisions of the Treasury officials, to abide the decisions of any of the law officers of the government. The Solicitor of the Treasury then decided against them; the Attorney-General as well. They have had for years the forum they now seek, and, without explanation, refused to avail themselves of it, and now, after the lapse of almost twenty-seven years, and the witnesses for the government generally are dead, it seems to your committee that this claim should not be favored, especially as we agree to the conclusions so uniformly arrived at on the hearings the case has had. We are of opinion that the case was not one of "impressment" under the law, and so we report the bill back, and recommend that it lie on the table.



GRANTING TO CERTAIN PARTIES RIGHT OF WAY OVER
LANDS AND WATERS OF THE UNITED STATES.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. PAGE, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 2374.]

The Committee on Commerce, to whom was referred the bill (H. R. 2374) granting to certain parties right of way over lands and waters of the United States, beg leave to report the same to the House with an amendment, to wit: Strike out all after the word "provided," and insert the following: "That every part of such pipes, aqueducts, or other constructions shall be at least 10 feet below the surface of said waters at mean low tide: *Provided also*, That if at any time the constructions of said company shall in any way obstruct or interfere with the free and safe navigation of any of said waters, such constructions shall be removed or changed by the company upon notification by the Secretary of War"; and recommend that the bill, so amended, do pass.

This recommendation is founded upon the views of the War Department as set forth in the letters of the Secretary of War, Chief of Engineers, U. S. A., and Maj. Amos Stickney, Corps of Engineers, hereto appended.

WAR DEPARTMENT,
Washington City, July 11, 1882.

SIR: I have the honor to acknowledge the receipt of a letter from the clerk of the Committee on Commerce, dated the 16th of February last, requesting information relative to House bill 2374, granting to the Crescent City Aqueduct and Water Works Company the right of way to lay conduits, &c., under Lake Pontchartrain, &c., and in reply would invite your attention to the inclosed communication from the Chief of Engineers of this day's date, and the accompanying copy of the report of Maj. Amos Stickney, Corps of Engineers, to whom the subject was referred, in whose views and recommendations I concur.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
Secretary of War.

Hon. H. F. PAGE,
Chairman Committee on Commerce, House of Representatives.

OFFICE OF THE CHIEF OF ENGINEERS,
UNITED STATES ARMY,
Washington, D. C., July 11, 1882.

SIR: I have the honor to return herewith the letter from the Committee on Commerce of the House of Representatives of February 16, 1882, referring to the War Department H. R. 2374, "granting to certain parties right of way over lands and waters of the United States," and in reply thereto to invite attention to the inclosed copy of the

2 RIGHT OF WAY OVER LANDS AND WATERS OF UNITED STATES.

report thereon from Maj. Amos Stickney, Corps of Engineers, to whom it was referred, whose views and recommendations are concurred in.

Very respectfully, your obedient servant,

JOHN G. PARKE,
Acting Chief of Engineers.

Hon. ROBT. T. LINCOLN,
Secretary of War.

UNITED STATES ENGINEER OFFICE,
New Orleans, La., March 14, 1882.

GENERAL: I have the honor to report that I have examined the inclosed bill, granting right of way to the Crescent City Aqueduct and Water Works Company to lay pipes, &c., under the waters of Lake Pontchartrain, &c., and I have had an interview with Mr. Penn. He states that the company has not as yet selected the line upon which to lay their pipes, but in any event they propose to keep at least ten feet below lake surface.

The maximum draft of vessels navigating the lake is 8 feet, and very few vessels exceed 7. Therefore I see no objection to the bill, but would recommend that the proviso be changed, and an additional one made to read as follows: "*Provided, That every part of such pipes, aqueducts, or other constructions, shall be at least ten feet below the surface of said waters at mean low tide: Provided, also, That if at any time the constructions of said company shall in any way obstruct or interfere with the free and safe navigation of any of said waters, such constructions shall be removed or changed by the company upon notification by the Secretary of War.*"

Very respectfully, your obedient servant,

AMOS STICKNEY,
Major of Engineers, U. S. A.

Brig. Gen. H. G. WRIGHT,
Chief of Engineers, U. S. Army, Washington, D. C.

○

THE REMOVAL OF OBSTRUCTIONS TO THE FREE NAVIGATION OF THE NAVIGABLE WATERS OF THE UNITED STATES.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. WASHBURN, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 6546.]

The Committee on Commerce, to whom was referred the bill (H. R. 6546) to provide for the removal of obstructions to the free navigation of the navigable waters of the United States, beg leave to report the same to the House with the recommendation that it do pass.

This recommendation is based upon the views and information conveyed in correspondence from the Secretary of War, the Chief of Engineers, United States Army, and a report from Captain Mackenzie of the Engineer Corps, United States Army, from which it appears to be important that action be taken by Congress to facilitate navigation through the various bridges over the Upper Mississippi River, and that the establishment of proper structures at such bridges, as provided for by this bill, will save, at least, \$122,000 per annum to the interests of navigation on that river, which must otherwise be lost.

The accompanying report of Captain Mackenzie sets forth all the facts:

BRIDGE OBSTRUCTION TO NAVIGATION OF UPPER MISSISSIPPI RIVER.

UNITED STATES ENGINEER OFFICE,
Rock Island, Ill., March 9, 1882.

GENERAL: I have the honor to present for your information a special report on the subject of obstruction to navigation caused by the Upper Mississippi bridges, with a view to showing the great damage and loss to which the steamboat and lumber interests are continually subjected from delays and accidents due to want of proper structures, floating or fixed, by means of which the approach to, and passage of, the numerous bridges now spanning the river might be rendered reasonably safe for life and property, and by which the frequent and vexatious delays now necessary at night or in windy weather might be in a great measure avoided. On March 3, 1875, Congress called for an inquiry into the expediency of establishing sheer-booms at bridges, and the report of a board of engineers, appointed for the purpose of considering the matter, submitted to the honorable the Secretary of War, February 19, 1877, recognizes the necessity of works for protection to navigation, and presents plans for the various bridges. Since the report was made the river business and injurious effects of bridges built prior to April 1, 1872, have vastly increased, and the subject of protection has been continually agitated. It seems, therefore, proper for me to again present this matter to your notice owing to the immense importance of it to all interested in navigation. My belief, which I am sure is shared by all familiar with the wants of the Upper Mississippi, is that no more useful work could be done than that by which the passage of the bridges may be improved.

The two bridges last built, viz, those at La Crosse and Sabula, were constructed, subject to the excellent provisions of the act of April 1, 1872, which gives to the Secretary of War full powers in regard to location, plans, &c., and these bridges provided with suitable draws adjacent to the shore, and with long and substantial guard fences, present obstacles to navigation diminished, according to the opinion of experts, fully 70 per cent., as compared with those formerly built. This very fact, demonstrating as it does the *practicability* of making all bridges reasonably safe, is a strong argument

in favor of so doing. The plans presented by the Board of Engineers in their report of February 19, 1877, would, in the light of more recent experience, require some modifications, and without desiring to express an opinion as to whom the work should be done by, I would say that if it were to be performed by the government, it would be desirable to revise the plans, after consultation on the ground with the most experienced raft, boat, and packet pilots. Until such new plans are prepared, it is impracticable to give the cost of the work, but an approximate estimate for furnishing a certain amount of relief at all the bridges would be \$100,000.

The bridges at which the most trouble is experienced are nine in number, viz:

1. Winona, built under act of July 25, 1866.
2. Dubuque, built under act of July 25, 1866.
3. Clinton, built without authority from Congress, but legalized in 1867.
4. Rock Island, built under act of July 25, 1866, by United States.
5. Burlington, built under act of July 25, 1866.
6. Keokuk, built under act of July 25, 1866.
7. Quincy, built under act of July 25, 1866.
8. Hannibal, built under act of July 25, 1866.
9. Louisiana, built under acts of March 3, 1871, and June 4, 1872.

During the past few months I have received many letters from prominent lumber firms, raftmen, and steamboatmen, and I desire by giving extracts from these, and by calculations based upon information contained in them, and upon data otherwise in possession of this office, to show approximately the money value of the annual damage resulting from bridge obstructions, 70 per cent. of which could probably be saved if adequate protection were afforded.

[Extract from letter of Joseph Reynolds, president and proprietor of the Diamond Jo Line of packets and towboats, which line carried in 1881 197,931 tons of freight and 16,579 passengers.]

DUBUQUE, IOWA, *December 23, 1881.*

SIR: * * * In regard to the amount of damage the Diamond Jo Line sustained in 1881, I can inform you about as follows: One barge struck Rock Island bridge in May—damage, \$10,000; one barge struck Hannibal bridge in June—damage, \$3,000; one barge struck above Rock Island bridge, in consequence of the bridge, in November—damage, \$2,000; total, \$15,000. But all this is light compared to the damage we sustain in waiting for wind to go down or daylight to come, so that we may dare venture through the bridges. I was just talking to the captain of the Mary Morton, and he estimates the damage at \$2,500 to that boat's business just from this delay alone, and says it is still more to my other boats, from the fact that he did not tow so many barges and could go through when the others could not venture.

My own opinion is that, without any accidents whatever, the delay on account of darkness, wind, and breaking of tows costs my boats an average of \$600 a trip to each, running between Saint Paul and Saint Louis, more than if there were no railroad bridge abutments in the river. I think there is no one improvement to the river where so little money can do the lumbermen and boatmen so much good as in building sheer-booms, dikes, &c., at these bridges.

Yours, truly,

JO. REYNOLDS.

Capt. A. MACKENZIE.

In another communication Mr. Reynolds says:

“But I think amidst of all our wants and needs that the greatest need at present is dikes and booms at the various bridges along the river to protect our boats in passing the draws. It may be, and undoubtedly is, the business of the railroad corporations to erect these protections, but they never will do it, and the sooner the government takes hold of the matter the sooner our boats will be better protected from these accidents.”

[Extract from letter of F. L. Johnston, secretary Saint Louis and Saint Paul Packet Line, which carried in 1881 182,075 tons freight and 37,200 passengers.]

SAINT LOUIS, *December 28, 1881.*

SIR: In reply to yours of the 12th instant to W. F. Davidson, president, will say the Saint Louis and Saint Paul Packet Company have sustained losses as follows by collision of their steamboats with bridges, namely:

Sept. 30, steamer Minneapolis collided with Hannibal bridge, damage to boat.	\$1,000
Nov. 13, steamer Minneapolis collided with Louisiana bridge, damage to boat.	500
Nov. 4, steamer War Eagle collided with Keokuk bridge, damage to boat and cargo (estimated)	40,000
Total	41,500

Yours, respectfully,

F. L. JOHNSTON, *Secretary.*

Capt. A. MACKENZIE.

I give below extracts from letters of prominent lumber firms, whose interests are far greater than even those of the packet and towboat companies.

[From W. J. Young & Co., of Clinton, Iowa.]

CLINTON, IOWA, *December 15, 1881.*

DEAR SIR: * * * Will say that the only serious accident which occurred, or greatest loss, was from towboat Abner Giles' log-raft, which broke upon Clinton bridge, loss \$808. Our other smaller losses at this bridge we would estimate at \$500, and at bridges above here through which our boats have to pass, viz, Sabula, Dubuque, La Crosse, and Winona, we estimate our loss by detention at not less than \$8,000 for year 1881. Our three boats made through trips as follows: Sterling, 27; Mills, 34; Boardman, 19; in all 80 trips through four bridges above Clinton, detention at each bridge, say, average of 5 hours, which would be 20 hours' lost time for each trip; so we have 80 trips with loss of 20 hours each, which make 1,600 hours of lost time, at \$5 per hour, equal to \$8,000. * * *

W. J. YOUNG & CO.

Capt. A. MACKENZIE.

[From Chippewa Lumber and Boom Company.]

CHIPPEWA FALLS, WIS., *January 14, 1882.*

DEAR SIR: Replying to your favor we hand you statement of damages sustained by us through delays at bridges.

We have no break-ups to report, having been unusually fortunate in that respect. We heartily indorse your views regarding the establishment of sheer-booms or guard-fences at the several bridges (such as exist at La Crosse, McGregor, and Sabula), and are satisfied the same would prove of material benefit to navigation, making the running of bridges safe by night as well as by day. We estimate our loss through delay at each bridge to be not less than \$25 each trip.

WILLIAM IRVINE, *Secretary.*

Capt. A. MACKENZIE.

[From McDonald Bros.' Towboat Line.]

LA CROSSE, WIS., *January 31, 1882.*

DEAR SIR: * * * The six boats which we use exclusively in towing rafts to points below ran down through the various bridges 1,340 times. The half of this number would be the number of whole rafts ran through them. It would be very moderate to put the average cost occasioned by the delay at each bridge at \$20 per raft. This would make a total expense occasioned by lost time alone of \$13,400 for the past season. A very considerable proportion of this amount would be saved if we had the assistance of sheer-booms, &c.

D. A. McDONALD.

Capt. A. MACKENZIE.

[From Weyerhaeuser and Denkmann.]

SIR: * * * We beg leave to make the following statement of the damages suffered by our steamboat and rafting interest during the season of 1881, on account of the improper location and management of the several bridges spanning the Mississippi River at Winona, La Crosse, Dubuque, Sabula, Clinton, and Rock Island. In connection herewith it would be proper to state that the cost of running and the time consumed thereby is materially less at the La Crosse and Sabula bridges than at the other bridges, for the reason that the approaches thereto, that is, to the draw from above, are carefully protected by heavy guard-fences, by means of which a raft is directed squarely between the piers, and whereby the danger is materially lessened. This sorely-needed, danger-diminishing device is lacking at the other bridges and should be introduced at the earliest practicable moment. Our actual damage, or money loss, is as follows: The C. J. Caffrey, during season of 1881, made 22 trips; the Dekmann, 20 trips; or a total for both of our boats of 42 trips. In making these trips they passed all of the above-named bridges. The average detention at Winona, Dubuque, Clinton, and Rock Island is fully 6 hours for each bridge, or a total of 24 hours, or one day per trip. This would make 42 days for the entire season. The average cost of running each steamer is about \$85 per day. Now, to obtain our actual damage, it will only be necessary to multiply 85 by 42=3,570, and you have it, namely, \$3,570. Besides this, we had the misfortune of having half of a raft strike the Rock Island bridge, thereby entailing a further loss upon us of \$2,000. We believe that a large

proportion of these losses might have been saved had the approaches been protected, as at Sabula and La Crosse. * * *

WEYERHAEUSER & DENKMANN.

Capt. A. MACKENZIE.

From the above statements of W. J. Young & Co., Chippewa Lumber and Boom Company, McDonald Brothers, and Weyerhaeuser and Denkmann, it will be safe and moderate to estimate the actual loss by delays, accidents, &c., at each bridge to be \$25 per raft, with the exception of La Crosse and Sabula, which we put at \$7.50 per raft. There follows a tabular statement showing names of bridges, number of passages of rafts in 1881, approximate amount of loss by detention, accidents, &c., at each bridge, and the total damage to the lumber interest from this cause during the entire season.

Locality.	Passages of rafts in 1881.	Average loss per passage by delays and accidents.	Amounts.
Winona	889	\$25 00	\$22, 225
La Crosse.....	804	7 50	6, 030
Dubuque.....	803	25 00	20, 075
Sabula	753	7 50	5, 647
Clinton.....	750	25 00	18, 750
Rock Island.....	700	25 00	17, 500
Burlington.....	522	25 00	13, 050
Keokuk.....	430	25 00	10, 750
Quincy	396	25 00	9, 900
Hannibal.....	257	25 00	6, 425
Louisiana	114	25 00	2, 850
Totals.....	6, 418	.....	133, 202

The above indicates a loss to the lumber interest of \$133,202 in 1881, by far the greater portion of which would have been saved with proper guard-fences and sheer-booms.

The following copy of a letter from S. B. Withrow, captain of steamer Menomonie, gives a sample of the experience of raft-boats during a season:

READ'S LANDING, December 21, 1881.

DEAR SIR: I send you the report of the damage and detention of the steamer Menomonie for the season of 1881, at the bridges of the Mississippi:

I. Detention.

	Hours.
Winona bridge	60
Dubuque bridge.....	60
La Crosse bridge.....	60
Clinton bridge.....	60
Rock Island bridge.....	60
Burlington bridge.....	75
Keokuk bridge.....	30
Quincy bridge	60
Hannibal bridge	60
Louisiana bridge.....	75

The actual cost of running the boat a day is \$85, and the delay for season amounts to 25 days. At \$85 a day, the total loss for the season would be \$2,125. I have not mentioned Sabula bridge, as it has been improved and causes very little delay. The bridges I have mentioned are in an unimproved state, but if improved there would be scarcely any detention.

II. Damage to raft.

From hitting Rock Island bridge in July.....	\$50
From hitting Keokuk bridge in September	100

Yours truly,

S. B. WITHROW,
Captain Steamer Menomonie.

Capt. A. MACKENZIE.

The following is a list of money damage, as far as could be learned, to several of the raft-boats, with their tows, during season of 1881 :

Menomonie.....	\$2, 275
Mountain Belle.....	2, 400
Louisville.....	850
Helen Mar.....	2, 400
Lizzie Gardner.....	3, 300
Pete Kirns.....	2, 500
Chapman.....	2, 050
Caffrey.....	3, 785
Denkmann.....	1, 785
McDonald Brothers, six boats, \$2,466 each.....	15, 796
Sterling.....	2, 700
Mills.....	3, 400
Boardman.....	1, 900
Total.....	45, 141

Being total loss of eighteen boats, or an average of about \$2,500 for each boat. As there were some seventy-five boats in active service, the total loss in 1881 may be estimated in this way at about \$187,500.

[From letter of Turner, Hollingshead & Co., Lansing, Iowa.]

LANSING, IOWA, *January 2, 1882.*

DEAR SIR: We are in receipt of a notice sent to the Daniel Shaw Lumber Company, of Eau Claire, Wis., and forwarded by them to us. We handle the above company's lumber on the Mississippi River; also that of the Chippewa Lumber and Boom Company, of Chippewa Falls, Wis., and of the Badger State Lumber Company, of Eau Claire. For the three lumber firms above mentioned we run this past season, from the mouth of the Chippewa to Saint Louis and intermediate points, 80,000,000 feet of lumber and 50,000,000 laths and shingles. My reasons for making this statement you will notice farther on. We are not prepared to give you any correct statement as to damages sustained by us in handling the above amount of lumber, as we have kept no account of such damages; and I think you will find this to be the case generally. While we could not give you anything like an exact account of actual damage by the bridges, we could make a statement of this kind: that we would have transported this lumber the past season, from the mouth of the Chippewa to Saint Louis and points between the above-named places, at a certain amount less if it was not for the bridges and their dangerous approaches. For instance, had we run this 80,000,000 feet to Saint Louis, we would have contracted with the lumber companies to run or transport it for 25 cents less per M than our present contract prices; if to Hannibal, Mo., at 20 cents less; if to any point between Le Claire, Iowa, and Montrose, Iowa, for 15 cents less; if to Dubuque, or any point between Dubuque and Le Claire, for 10 cents less. If the receipts of lumber delivered at above points during the past season were estimated at the above prices, viz, 25, 20, 15, and 10 cents per M, it would give a more correct estimate than you can possibly get any other way.

Very respectfully,

TURNER, HOLLINGSHEAD & CO.

Capt. A. MACKENZIE.

I have obtained statistics of lumber rafted to and manufactured at the various points on the Upper Mississippi River, and, following the suggestion of Turner, Hollingshead & Co., arrive at the following results for 1880 :

To Le Claire and points above, 278,293,000 feet, at 10 cents.....	\$27, 829
To points between Le Claire and Montrose, 376,249,000 feet, at 15 cents.....	56, 437
To points between Montrose and Hannibal, 264,820,000 feet, at 20 cents.....	52, 964
To Saint Louis, 229,560,000 feet, at 25 cents.....	57, 390

Total amount that could be saved to consumers were there no bridges... 194, 620

If we make a comparison of the three estimates of loss and damage to lumber interests above given, adding a reasonable amount for loss by accident and delay to freight and passenger boats and barges, we may fairly estimate the total loss to the interests of navigation at least \$175,000 per annum, solely due to the existence of bridges across the Mississippi River.

Every bridge that may in the future be built will add its quota to that amount. Assuming that 70 per cent. of this loss might be avoided by proper structures at the various bridges, it becomes evident that \$122,000 per annum can be saved by such improvements.

Very respectfully, your obedient servant,

A. MACKENZIE,
Captain of Engineers.

The CHIEF OF ENGINEERS, U. S. A.

C

BRIDGES OVER THE WILLAMETTE RIVER, IN THE STATE
OF OREGON.

JULY 15, 1882. — Referred to the House Calendar and ordered to be printed.

Mr. WASHBURN, from the Committee on Commerce, submitted the following

R E P O R T :

[To accompany bill H. R. 6742.]

The Committee on Commerce, to whom was referred the bill (H. R. 5967) to authorize the Oregon Pacific Railroad Company to construct one or more bridges across the Willamette River, in the State of Oregon, and to establish them as post-roads, beg leave to report the same back to the House with a substitute, with the recommendation that the said substitute do pass.

This recommendation is based upon communications from the War Department, hereto appended.

WAR DEPARTMENT,
Washington City, July 1, 1882.

SIR: I have the honor to acknowledge the receipt of your letter of the 28th ultimo, referring Senate bill 1681, "to authorize the Oregon Pacific Railroad Company to construct one or more bridges across the Willamette River, in the State of Oregon, and to establish them as post-roads," and in response to your request for information concerning the same to invite your attention to the inclosed report of the Chief of Engineers, of yesterday's date, which contains the views of this department on the subject.

Very respectfully, your obedient servant,

JOHN TWEEDALE,
Chief Clerk,
For the Secretary of War, in his absence.

Hon. W. D. WASHBURN,
Of Committee on Commerce, House of Representatives.

OFFICE OF THE CHIEF OF ENGINEERS,
UNITED STATES ARMY,
Washington, D. C., June 30, 1882.

SIR: I have the honor to return herewith the letter of the Hon. W. D. Washburn, of the Committee on Commerce, House of Representatives, of the 28th instant, with inclosed Senate bill 1681, "to authorize the Oregon and Pacific Railroad Company to construct one or more bridges across the Willamette River, in the State of Oregon, and to establish them as post-roads," and requesting opinion thereon, referred to this office on the 29th instant, and to report that, in my judgment, inasmuch as the bill contains all necessary provisions for the protection of the interests of commerce and navigation by making the plans, specifications, and locations of the proposed bridges

subject to the approval of the Secretary of War, there appears to be no objection to its passage in its present form.

Very respectfully, your obedient servant,

H. G. WRIGHT,
Chief of Engineers, Brigadier and Brevet Major General.

Hon. ROBERT T. LINCOLN,
Secretary of War.

WAR DEPARTMENT,
Washington City, June 8, 1882.

SIR: Acknowledging the receipt of your letter of the 27th ultimo, referring, with request for the views of this department thereon, bill H. R. 5967, "to authorize the Oregon Pacific Railroad Company to construct one or more bridges across the Willamette River, in the State of Oregon, and to establish them as post-roads," I have the honor, in reply thereto, to invite your attention to the inclosed report on the subject from the Chief of Engineers, from which it appears that there is no objection to the passage of the bill in its present form.

The bill is returned herewith.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
Secretary of War.

Hon. W. D. WASHBURN,
Of Committee on Commerce, House of Representatives.

OFFICE OF THE CHIEF OF ENGINEERS,
UNITED STATES ARMY,
Washington, D. C., June 5, 1882.

SIR: I have the honor to return bill H. R. 5967, "to authorize the Oregon Pacific Railroad Company to construct one or more bridges across the Willamette River, in the State of Oregon, and to establish them as post-roads," referred to the War Department by the Hon. W. D. Washburn, of the Committee on Commerce of the House of Representatives, for suggestions, and beg leave to report that, in my opinion, inasmuch as the bill contains all necessary provisions for the protection of the interests of commerce and navigation by making the plans, specifications, and locations of the proposed bridges, including widths of spans, &c., subject to the approval of the Secretary of War, there appears to be no objection to its passage in its present form.

Very respectfully, your obedient servant,

H. G. WRIGHT,
Chief of Engineers, Brigadier and Brevet Major General.

Hon. ROBERT T. LINCOLN,
Secretary of War.

BRIDGES OVER THE OGEECHEE, OCONEE, OCMULGEE,
FLINT, AND CHATTAHOOCHEE RIVERS, IN THE STATE OF
GEORGIA.

JULY 15, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. WASHBURN, from the Committee on Commerce, submitted the
following

REPORT:

[To accompany bill H. R. 6683.]

The Committee on Commerce, to whom was referred the bill (H. R. 6683) to authorize the construction of bridges over the Ogeechee, Oconee, Ocmulgee, Flint, and Chattahoochee Rivers, in the State of Georgia, beg leave to report the same to the House with certain amendments, and to recommend that with such amendments the bill do pass.

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BRIDGE ACROSS THE SAINT JOHN'S RIVER, FLORIDA.

JULY 15, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. WASHBURN, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 6105.]

The Committee on Commerce, to whom was referred the bill (H. R. 6105) to authorize the Sanford and Indian River Railroad Company to construct a bridge across the Saint John's River, in the State of Florida, and to establish it as a post-road, submit the following report:

This bill was referred to the Secretary of War for suggestions, &c. The following correspondence was received with reference to it. Your committee would respectfully recommend the passage of the bill, with the amendments suggested in the letter of General Wright, Chief of Engineers, and also of Q. A. Gillmore, lieutenant-colonel of engineers, &c.; also by amending section 3 by adding, after the words "United States," in line 6, the words "and for freight and passengers."

WAR DEPARTMENT,
Washington City, June 14, 1882.

SIR: Returning herewith the bill (H. R. 6105) to authorize the Sanford and Indian River Railroad Company to construct a bridge across the Saint John's River, in the State of Florida, and to establish it as a post-road, received with your letter of the 27th ultimo, I have the honor, in response to your request for information regarding the same, to invite your attention to the accompanying report from the Chief of Engineers of the 9th instant, in whose views and suggestions I concur.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
Secretary of War.

Hon. W. D. WASHBURN,
Of Committee on Commerce, House of Representatives.

OFFICE OF THE CHIEF OF ENGINEERS,
UNITED STATES ARMY,
Washington, D. C., June 9, 1882.

SIR: I have the honor to return herewith the bill (H. R. 6105) to authorize the Sanford and Indian River Railroad Company to construct a bridge across the Saint John's River, in the State of Florida, and to establish it as a post-road, referred to the War Department by the Hon. W. D. Washburn, of the Committee on Commerce, House of Representatives, for suggestions, and thence to this office, and in reply thereto to invite attention to the following report of Lieut. Col. Q. A. Gillmore, Corps of Engineers, to whom it was referred, in which I concur.

It may be proper, also, to call attention to the fact that the bill does not contain the usual provisions requiring that "the plan and location of the bridge shall be subject to the approval of the Secretary of War, and until the plan and location have been approved by him the bridge shall not be commenced."

It is suggested that the bill be amended accordingly.

[Second indorsement.]

UNITED STATES ENGINEER OFFICE,
New York, June 6, 1882.

Respectfully returned to the Chief of Engineers, with the report that I have no change to recommend in the limitations and conditions expressed in bill H. R. 6105, Forty-seventh Congress, first session, to authorize the Sanford and Indian River Railroad Company to construct a bridge across the Saint John's River near the mouth of Lake Jessup, except in the fourth line of section 2, where the width of the draw span is fixed at 35 feet. In my judgment, the draw span should have a clear width of not less than 45 feet, so as to accommodate a somewhat larger class of boats than are now used on that portion of the river.

Q. A. GILLMORE,
Lieutenant-Colonel of Engineers, Bvt. Maj. Gen'l, U. S. A.

Very respectfully, your obedient servant,

H. G. WRIGHT,
Chief of Engineers, Brig. and Bvt. Maj. Gen'l.

Hon. ROBERT T. LINCOLN,
Secretary of War.

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BRIDGES ACROSS BLACK RIVER, LITTLE RIVER, RED RIVER, AND SABINE RIVER, IN THE STATE OF LOUISIANA.

JULY 15, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. WASHBURN, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 5605.]

The Committee on Commerce, to whom was referred the bill H. R. 5605, submit the following report:

Upon receipt of the bill H. R. 5605, your committee addressed the Secretary of War upon the propriety of the passage of the same, and received a report (copy of which is hereto attached) from General Wright, Chief of Engineers. In conformity with the suggestions of General Wright, your committee would respectfully recommend the passage of the bill without amendment.

WAR DEPARTMENT,
Washington City, June 8, 1882.

SIR: In reply to your letter of the 27th ultimo, requesting the views of this department touching the bill (H. R. 5605) authorizing the construction of bridges across Black River, Little River, Red River, and Sabine River, in the State of Louisiana, I have the honor to inclose, for your information, a report from the Chief of Engineers on the subject, dated the 5th instant, from which it will be seen that there is no objection to the passage of the bill in its present form.

The bill is herewith returned.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
Secretary of War.

Hon. W. D. WASHBURN,
Of Committee on Commerce, House of Representatives.

OFFICE OF THE CHIEF OF ENGINEERS,
UNITED STATES ARMY,
Washington, D. C., June 5, 1882.

SIR: I have the honor to acknowledge the reference to this office of H. R. 5605, "A bill authorizing the construction of bridges across Black River, Little River, Red River, and Sabine River, in the State of Louisiana," referred to the War Department on the 27th ultimo by Hon. W. D. Washburn, for suggestions, and to return the same with opinion that inasmuch as the bill contains all necessary provisions for the protection of the interests of commerce and navigation by making the plans and location subject to the approval of the Secretary of War, there appears to be no objection to its passage in its present form.

Very respectfully, your obedient servant,

H. G. WRIGHT,
Chief of Engineers, Brig. and Bvt. Maj. Gen.

Hon. ROBERT T. LINCOLN,
Secretary of War.

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BRIDGE ACROSS THE SAINT LAWRENCE RIVER.

JULY 15, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. WASHBURN, from the Committee on Commerce, submitted the following

REPORT:

[To accompany H. Res. 236.]

The Committee on Commerce, to whom was referred the joint resolution (H. Res. 236) to authorize the construction and maintenance of a bridge across the Saint Lawrence River, beg leave to report the same to the House, with the recommendation that it do pass.

This recommendation is founded upon the accompanying correspondence and views of the Secretary of War and Engineer Corps.

WAR DEPARTMENT,
Washington City, June 28, 1882.

SIR: I have the honor to acknowledge the receipt of your letter of the 21st instant, requesting the views of this department in regard to House resolutions 234 and 236, authorizing the construction and maintenance of a bridge across the Saint Lawrence River by the New York and Canada Bridge Company, and beg to inclose, in reply, a communication from the Chief of Engineers, and the accompanying copy of his report, dated the 24th instant, upon Senate resolution 81, for the same purpose, and almost identical in terms with those presented by you.

The resolutions are returned herewith.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
Secretary of War.

Hon. W. D. WASHBURN,
Of Committee on Commerce, House of Representatives.

OFFICE OF THE CHIEF OF ENGINEERS,
UNITED STATES ARMY,
Washington, D. C., June 27, 1882.

SIR: I have the honor to return herewith House resolutions 234 and 236, authorizing the construction and maintenance of a bridge across the Saint Lawrence River, referred to the War Department by the Hon. W. D. Washburn, of the Committee on Commerce of the House of Representatives, and to state that a report was submitted from this office on the 24th instant on Senate resolution 81, for the same purpose, which is almost identical in terms with the first-mentioned resolution, and of like import with the last named.

A copy of the report is herewith submitted.

Very respectfully, your obedient servant,

H. G. WRIGHT,
Chief of Engineers, Brig. and Bvt. Maj. Gen.

Hon. ROBERT T. LINCOLN,
Secretary of War.

OFFICE OF THE CHIEF OF ENGINEERS,
UNITED STATES ARMY,
Washington, D. C., June 24, 1882.

SIR: I have the honor to return herewith the letter of the Hon. S. J. R. McMillan, chairman of the Committee on Commerce, United States Senate, transmitting for suggestions, &c., the joint resolution (S. Res. 81) to authorize the construction and maintenance of a bridge across the Saint Lawrence River, and in reply thereto to invite attention to the following copy of the report thereon from Maj. Walter McFarland, Corps of Engineers, to whom it was referred, in whose views I concur.

The inclosures referred to in Major McFarland's indorsement are also herewith.

"UNITED STATES ENGINEER OFFICE,
"Oswego, N. Y., June 21, 1882.

"Respectfully returned to the Chief of Engineers.

"I have examined the subject and have compared the inclosed resolution carefully with all the bills relating to bridges that have been passed by Congress in the last twenty years, and find nothing to suggest in relation to it. It appears to be full and complete.

"It may be remarked, however, that the articles of incorporation of the two companies referred to in this joint resolution, the one Canadian the other American (New York State), prescribe different dimensions for the bridge which they propose to build. The Canadian articles place the height of the arches of the bridge at 61 feet above the water and give to the channel-span a width of 350 feet at least, and to the others a width of not less than 200 feet.

"The American articles make these dimensions respectively 60 feet, 250 feet, and 150 feet. The corresponding dimensions of the Victoria Tubular Bridge, which crosses the Saint Lawrence River at Montreal, are 60 feet, 330 feet, and 242 feet, which should be the *least* dimensions allowed in the proposed bridge at Waddington.

"This, however, is sufficiently provided for in the second paragraph of the joint resolution, which subjects the location and construction of the work to the supervision of the Secretary of War of the United States.

"All the inclosures are returned herewith.

"WALTER MCFARLAND,
"Major of Engineers."

Very respectfully, your obedient servant,

H. G. WRIGHT,
Chief of Engineers, Brig. and Bvt. Maj. Gen.

Hon. ROBERT T. LINCOLN,
Secretary of War.

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INSPECTORS OF HULLS AND BOILERS IN THE DISTRICTS
OF MICHIGAN AND SUPERIOR.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. WASHBURN, from the Committee on Commerce, submitted the following

R E P O R T :

[To accompany bill H. R. 6237.]

The Committee on Commerce, to whom was referred the bill (H. R. 6237) amending section 4414 of the Revised Statutes, fixing the compensation of inspectors of hulls and boilers in the districts of Michigan and Superior, within the State of Michigan, having considered the same, submit the following report:

The object of this bill is to increase the salaries of the local inspectors of steamboats in the districts of Michigan and Superior, in the former of which the salary now allowed by law is \$900, and in the latter \$800, per annum. An examination into the salaries paid for this service will show, first, that they are unequal, and that in the cases above mentioned they are not adequate compensation for the service performed. The committee, to substantiate this statement, attach hereto letters from the Secretary of the Treasury and from the supervising inspector-general, which so clearly make the fact above stated appear, and so clearly show the necessity of the legislation proposed, that without further comment they report the bill back to the House with a recommendation that it do pass.

TREASURY DEPARTMENT, *June 26, 1882.*

SIR: In accordance with the request contained in your letter of the 24th instant, I transmit herewith copies of department letter, dated March 14, 1882, and letters of the supervising inspector general of steamvessels, dated January 14 and 19, 1882, respectively, all addressed to Senator Ferry, of Michigan, and referring to proposed legislation increasing the salaries of the local inspectors of steam vessels in the districts of Michigan and Superior.

Very respectfully,

CHAS. J. FOLGER,
Secretary.

Hon. JAY A. HUBBELL,
House of Representatives.

TREASURY DEPARTMENT, *March 14, 1882.*

SIR: I transmit copies of letter heretofore sent to you by one of the heads of divisions in this department.

It is apparent that the duties required of these inspectors call for mechanical skill

for education in theory, and for integrity of character, and these qualities should have an adequate compensation. I will not undertake to say that \$1,500 is that, or is less, or is more than that. I will say that the pay of this class of officers in different districts is unequal, and should be made alike, either by a reduction of that of some or an increase of that of others.

Respectfully, &c.,

CHAS. J. FOLGER,
Secretary.

Hon. T. W. FERRY,
United States Senate.

TREASURY DEPARTMENT,
OFFICE SUPERVISING INSPECTOR-GENERAL OF STEAMBOATS,
Washington, D. C., January 14, 1882.

SIR: In response to the request you made verbally to me for my opinion upon the salaries of the local inspectors of steam vessels in the district of Michigan, I have the honor to inform you that in the annual report from this office for the fiscal year ending June 30, 1881, I expressed the following general opinion, which appears to be specially applicable to the subject of your request:

"This being a service (steamboat inspection) involving life and death, integrity in its officers should be encouraged by proper remuneration, and no officer capable of satisfactorily performing the duties it requires should receive a compensation less than \$1,500 per annum."

According to said report the district of Michigan inspected for the year 1881 one hundred and thirty-nine vessels, at salaries of \$900 per annum, while there are five districts at salaries of \$2,000, and three at \$1,500, in each of which fewer vessels are inspected than in the Michigan district.

These facts appear to be conclusive as to the justice and propriety of the amendment you propose to section 4414, Revised Statutes, placing Michigan in the list of \$1,500 salaries.

Very respectfully,

JAS. A. DUMONT,
Supervising Inspector-General.

Hon. T. W. FERRY,
United States Senate.

TREASURY DEPARTMENT,
OFFICE SUPERVISING INSPECTOR-GENERAL OF STEAMBOATS,
Washington, D. C., January 19, 1882.

SIR: In response to the request you made verbally to me for my opinion upon the salaries of the local inspectors of steamboats in the district of Superior, I have the honor to inform you that in the annual report from this office for the fiscal year ended June 30-1880, I expressed the following general opinion, which appears to be specially applicable to the subject of your request:

"This being a service (steamboat inspection) involving life and death, integrity in its officers should be encouraged by proper remuneration, and no officers capable of satisfactorily performing the duties it requires should receive a compensation less than \$1,500 per annum."

According to the report for the year ended June 30, 1881, the Marquette or Superior district, at salary of \$800 per annum, inspected during said year 60 vessels, which is one more than a district which receives \$1,500 salaries, and but two less than another district which receives \$2,000 salaries.

These facts appear to be conclusive as to the justice and propriety of the amendment you propose in section 4414, Revised Statutes, placing the Superior district in the list of \$1,500 salaries.

Very respectfully,

JAS. A. DUMONT,
Supervising Inspector-General.

Hon. T. W. FERRY,
United States Senate.

BRIDGE ACROSS THE MISSISSIPPI RIVER AT OR NEAR
THE CHAIN OF ROCKS, IN THE CITY OF SAINT LOUIS,
MISSOURI.

JULY 15, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. WASHBURN, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 4541.]

The Committee on Commerce, to which was referred bill H. R. 4541, begs leave to report that upon receipt of this bill it was referred to the Secretary of War for information. The bill was referred by the Secretary of War to General Wright, Chief of Engineers, and by him to Majors Suter and Ernst, of the Engineer Corps. Copies of letters received from the Secretary of War and the Chief of Engineers, and a joint report from Majors Suter and Ernst, are appended.

Your committee has amended the bill (a copy of which is hereto attached) in conformity with the recommendations of the Chief of Engineers, and, thus amended, would recommend its passage.

WAR DEPARTMENT,
Washington City, April 6, 1882.

SIR: Referring to your letter of the 10th ultimo, inclosing, with request for suggestions concerning same, House bills Nos. 4487 and 4541, and to my reply, dated the 4th instant, in regard to the former, I have the honor now to return the bill (H. R. 4541) authorizing the construction of a bridge across the Mississippi River at or near the Chain of Rocks, in the northern part of the city of Saint Louis, State of Missouri, and to invite attention to the accompanying letter from the Chief of Engineers of the 3d instant, and reports from Major Suter and Captain Ernst, Corps of Engineers, on the subject.

The views and recommendations of these officers meet the approval of this department.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
Secretary of War.

Hon. W. D. WASHBURN,
Of Committee on Commerce, House of Representatives.

OFFICE OF THE CHIEF OF ENGINEERS,
UNITED STATES ARMY,
Washington, D. C., April 3, 1882.

SIR: Referring to letters from this office of the 1st instant, returning, with report, bill H. R. 4487, I have the honor now to return the letter of the Hon. W. D. Washburn, chairman of the subcommittee on Commerce of the House of Representatives, and the bill (H. R. 4541) authorizing the construction of a bridge across the Mississippi River at or near the Chain of Rocks, in the northern part of the city of Saint Louis,

2 BRIDGE ACROSS THE MISSISSIPPI AT SAINT LOUIS, MO.

State of Missouri, and to invite attention to the inclosed copy of the report thereon by Maj. Charles R. Suter and Capt. O. H. Ernst, Corps of Engineers, to whom it was jointly referred.

The recommendations of these officers, owing to their intimate acquaintance with the necessities of the navigation of the Mississippi River at the point designated for the proposed bridge, are entitled to careful consideration, and, concurring in their views, I beg to recommend that the amendments suggested by them be carried out.

Very respectfully, your obedient servant,

H. G. WRIGHT,
Chief of Engineers, Brig. and Bvt. Maj. Gen.

Hon. ROBERT T. LINCOLN,
Secretary of War.

UNITED STATES ENGINEER OFFICE,
Saint Louis, Mo., March 29, 1882.

GENERAL: We have the honor to return herewith the bill (H. R. 4541) authorizing the construction of a bridge across the Mississippi River at or near the Chain of Rocks, in the northern part of the city of Saint Louis, State of Missouri, transmitted to us with your letter of March 21, 1882, for our joint consideration and report.

The general provisions of the bill are substantially those inserted in recent bridge charters granted by the United States for bridges over the Mississippi River above the mouth of the Illinois River, with the following exceptions:

In line 11 of section 3, the word "span" should be "spans," thus providing a clear channel-way of 160 feet on *each* side of the pivot. And in other bridge charters it has been usual to require at least one raft-span of about 250 feet, in addition to the draw-spans; this provision is wanting.

But to require of this bridge the same facilities for the passage of vessels or rafts that have been required of the bridges now in operation above the mouth of the Illinois is not, in our opinion, sufficient. In the first place, these bridges have proved an obstruction to navigation, and the obstruction grows more and more serious with each addition to their number. Wider channel-ways, with sheer-booms or guide-piers, are now loudly demanded by the navigation interest, even in that part of the river. Much more will such increased facilities for passage be required below the mouth of the Illinois, and still more below the mouth of the Missouri, where this bridge is to be located.

It is our opinion that any bridge at or near the Chain of Rocks should, if made with unbroken or continuous spans, have at least two spans of not less than 400 feet clear channel-way each, the lowest part of the superstructure being at least 60 feet above extreme high-water mark. If constructed as a draw-bridge, there should be at least one draw-opening of not less than 400 feet clear channel-way, and all fixed spans between the shore-lines at the medium stage of water should be at least 300 feet long, the lowest part of the superstructure being at least 10 feet above extreme high-water mark, and such sheer-booms, guide-piers, or other structures as may be required to facilitate the passage of vessels or rafts should be constructed in connection with the draw-opening.

The shifting nature of the channel in this part of the Mississippi renders it a matter of doubt whether the channel will remain in the position which it may occupy at the time the bridge is constructed, unless works in the bed of the stream shall be placed above the bridge. The direction of the channel at any given point is the resultant of forces most of which have exerted their influence at a distance above much greater than one mile.

An investigation of the best means to alter or fix the position of the channel at any point will in most cases involve the study of the river for at least five miles above. Indeed, to fix the channel with ease and certainty involves the systematic improvement of the river for a much greater distance; but it is probable that the desired local result can generally be attained by works located within the distance given, while we have some doubt as to whether it might not properly be regarded as inflicting a hardship to require the company to extend their observations to a greater distance.

The map to be furnished by the bridge company, as provided in section 5 of this bill, should cover the ground for a distance of five miles above and one mile below, instead of as provided in line 8. Whether the company should be required to construct such training and preservative works in the bed of the stream, within a distance of five miles above the bridge and one mile below, as may be required by the Secretary of War, to prevent the desertion by the channel of the channel-ways provided through the bridge, is a question which we think should be decided by Congress, and we make no recommendation in the matter.

If the bill be modified in lines 3, 5, 12, of section 3, and in line 8 of section 5 in accordance with these views, and the provision for sheer-booms or equivalent guides be

introduced, we see no reason why a bridge cannot be constructed under it which will be no substantial or material obstruction to the free navigation of the river.

We are, general, very respectfully, your obedient servants,

CHAS. R. SUTER,
Major of Engineers, U. S. A.
O. H. ERNST,
Captain of Engineers.

Brig. Gen. H. G. WRIGHT,
Chief of Engineers, United States Army, Washington, D. C.

FORTY-SEVENTH CONGRESS, FIRST SESSION.

H. R. 4541.

IN THE HOUSE OF REPRESENTATIVES.

FEBRUARY 20, 1882.—Read twice, referred to the Committee on Commerce, and ordered to be printed.

Mr. BUCKNER introduced the following bill:

A BILL authorizing the construction of a bridge across the Mississippi River at or near the Chain of Rocks, in the northern part of the city of Saint Louis, State of Missouri.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for John L. Ferguson and James Gibson, of Saint Louis County; Joseph P. Card, Amos Hoffer, W. Lewellyn Hickman, Jacob Bitner, and George S. Case, of the city of Saint Louis; and Holland B. Evans, of Saint Charles County, all of Missouri, their assigns or successors, to construct and maintain a bridge, and approaches thereto, at or within one mile of the Chain of Rocks, in the northern part of the city of Saint Louis, in said State of Missouri. Said bridge shall be constructed for the passage of railway trains, and, at the option of the persons by whom it may be built, may be used for the passage of wagons and vehicles of all kinds, for the transit of animals, and for foot-passengers.

SEC. 2. That any bridge built under this act, and subject to its limitations, shall be a lawful structure, and shall be recognized and known as a post-route, upon which also no higher charge shall be made for the transmission over the same of the mails, the troops, and the munitions of war of the United States, or for passengers or freight passing over said bridge, than the rate per mile paid for the transportation over the railroads or public highways leading to the said bridge; and it shall enjoy the rights and privileges of other post-roads in the United States.

SEC. 3. That if said bridge shall be made with unbroken and continuous spans, two of such spans shall not be less than four hundred feet in length in the clear, and these spans shall be over the main channel of the river, as near as practicable. The lowest part of the superstructure of said bridge shall be at least sixty feet above extreme high-water mark, as understood at the point of location, and the bridge shall be at right angles to and its piers parallel with the current of the river: *Provided*, That if the same shall be constructed as a draw-bridge, the draw or pivot shall be over the main channel of the river at an accessible navigable point, and the spans shall not be less than two hundred feet in length in the clear, and such sheer-booms, guide-piers, and other structures as may be required to facilitate the passage of vessels or rafts shall be constructed in connection with said draw-opening, to the satisfaction of the Secretary of War, and all fixed spans between the shores at the medium stage of water shall be at least three hundred feet long, the lowest part of the structure being at least ten feet above extreme high-water mark; and the piers of said bridge shall be parallel with and the bridge itself at right angles to the current of the river, and the spans shall not be less than ten feet above extreme high-water mark, as understood at the point of location, to the lowest part of the superstructure of said bridge: *Provided also*, That said draw shall be opened promptly upon reasonable signal for the passing of boats; and said company or corporation shall maintain, at its own expense, from sunset till sunrise, such lights or other signals on said bridge as the Secretary of War may prescribe. No bridge shall be erected or maintained under the authority of this act which shall at any time substantially or materially obstruct the free navigation of said river; and if any bridge erected under such authority shall, in the opinion of the Secretary of War, obstruct such navigation, he is hereby authorized to cause such change or alteration of said bridge to be made as will effectually obviate such obstruction; and all such alterations shall be made and all such obstructions be removed at the expense of the owner or owners of said bridge. And in case of any litigation aris-

ing from any obstruction or alleged obstruction to the free navigation of said river caused or alleged to have been caused by said bridge, the case may be brought in the district court of the United States of the State of Missouri or Illinois in which any portion of said obstruction or bridge may be located: *Provided further*, That nothing in this act shall be so construed as to repeal or modify any of the provisions of law now existing in reference to the protection of the navigation of rivers, or to exempt this bridge from the operation of the same.

SEC. 4. That all railroad companies desiring the use of said bridge shall have and be entitled to equal rights and privileges relative to the passage of railway trains over the same, and over the approaches thereto, upon payment of a reasonable compensation for such use; and in case the owner or owners of said bridge and the several railroad companies, or any one of them desiring such use, shall fail to agree upon the sums to be paid, and upon rules and conditions to which each shall conform in using the said bridge, all matters at issue between them shall be decided by the Secretary of War upon a hearing of the allegations and proofs of the parties.

SEC. 5. That any bridge authorized to be constructed under this act shall be built and located under and subject to such regulations for the security of navigation of said river as the Secretary of War shall prescribe, and to secure that object the said company or corporation shall submit to the Secretary of War for his examination and approval a design and drawings of the bridge and a map of the location, giving for the space of five miles above and one mile below the proposed location the topography of the banks of the river, the shore-lines at high and low water, the direction and strength of the currents at all stages, and the soundings, accurately showing the bed of the stream, the location of any other bridge or bridges, and shall furnish such other information as may be required for a full and satisfactory understanding of the subject, and the company or corporation constructing such bridge shall be required to construct such training and preservative works in the bed of the stream, within a distance of five miles above the bridge and one mile below, as may be required by the Secretary of War; and until the said plan and location of the bridge are approved by the Secretary of War the bridge shall not be built; and should any change be made in the plan of said bridge during the progress of construction, such change shall be subject to the approval of the Secretary of War.

SEC. 6. That the right to alter, amend, or repeal this act is hereby expressly reserved.

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COMMERCIAL RELATIONS WITH PERSIA.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. C. G. WILLIAMS, from the Committee on Foreign Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6743.]

The Committee on Foreign Affairs, to whom was referred the joint resolution (H. Res. 195) authorizing the Secretary of State to take the necessary measures for the establishment of diplomatic relations with Persia, and making appropriation for that purpose, having had the same under consideration, respectfully report as follows:

The necessity for direct diplomatic relations with Persia has been made manifest by recent events. The Persian Government has signified a desire for the establishment of such friendly relations. The ambassador extraordinary of the Shah of Persia, sent to St. Petersburg with messages concerning the assassination of the Czar, expressed to the Hon. John W. Foster, minister plenipotentiary of the United States to Russia, the regret of his government that the United States did not maintain some kind of official relations with Persia. He said that "notwithstanding a treaty of friendship and commerce existed, contemplating such relations," none existed. He said, also, that American vessels visited Persian ports, and there were American citizens in the country.

The necessity for a more efficient protection for American citizens temporarily residing in Persia appears fully from the following official correspondence between this government and the British Government, whose intervention was invoked when our citizens were placed in circumstances of great peril, and whose kindly offices were acknowledged in a letter of Mr. Evarts, Secretary of State, to Mr. Lowell, minister to England, under date of December 31, 1880, as follows:

The prompt action taken by Her Majesty's Government in extending protection to the missionaries, and in furnishing full information in regard to their present condition, is exceedingly gratifying to this government, and I will therefore thank you to lose no time in conveying to the proper quarter the thanks of the President for the prompt and timely action of the British authorities in reference to this matter.

Mr. Lowell to Earl Granville.

LEGATION OF THE UNITED STATES,
London, December 7, 1880.

MY LORD: I have the honor to ask your lordship's attention to a letter, a copy of which is inclosed herewith, addressed by the Hon. R. R. Dawes, of Marietta, Ohio, a member-elect of the Forty-seventh Congress, to Mr. Evarts, in which that gentleman brings to the notice of the Department of State the perils to which he says he has reason to believe his sister, her husband, and other American missionaries of the

Presbyterian Board of Foreign Missions are now exposed at the missionary station Oroomiah, in Persia, in consequence of the condition of war said to exist in the province of Oroomiah, and of the fact that the missionaries are falsely accused of complicity with the Kuordish sheik, whose forces, according to the advices received by Mr. Dawes, are confronting that province.

As the representations made by Mr. Dawes in reference to this matter are doubtless very trustworthy, and inasmuch as the United States have no diplomatic representative in Persia, I am instructed to lose no time in communicating to your lordship the statements contained in Mr. Dawes' letter in regard to this matter, with a request that your lordship will kindly ask the representative of Her Majesty's Government in Persia to use his good offices for the protection of these American citizens, for whose safety great anxiety is felt in the United States. Commending this matter to your early attention,

I have, &c.,

J. R. LOWELL.

Earl Granville to Mr. Lowell.

FOREIGN OFFICE, *December 10, 1880.*

SIR: I have had the honor to receive your letter of the 7th instant requesting that instructions might be sent to Her Majesty's representative in Persia to use his good offices for the protection of the American missionaries and their families, resident at Oroomiah, who, it is feared, are in some danger owing to their being falsely accused of complicity with the Kurdish chief Sheikh Abdullah.

I have had much pleasure in complying with the wishes of the United States Government in this matter, and, for their confidential information, I have the honor to inclose printed copies of some reports recently received at this office from Mr. Abbott, Her Majesty's consul at Tabreez, who, under instructions from Her Majesty's Government, proceeded to Oroomiah in the month of October to inquire into the condition of the Nestorian Christians of that district, and was at that place at the time of the Kurdish invasion.

I have, &c.,

GRANVILLE.

Earl Granville to Mr. Lowell.

FOREIGN OFFICE, *December 10, 1880.*

Earl Granville presents his compliments to Mr. Lowell, and with reference to his letter of the 7th instant has the honor to transmit a copy of a telegram received this day from Her Majesty's minister at Teheran, relative to the measures taken for the security of the American missionaries at Oroomiah.

Copy of telegram from Mr. Thomson.

FOREIGN OFFICE,
Teheran, D. 7.30 p. m. R. 5.30.

The ill feeling against the American missionaries at Oroomiah, which was prevalent for some days after Sheikh Obeidullah's attack on the city, has now, I believe, entirely subsided.

The Sepah Salar is expected at Oroomiah to-morrow, and the Persian Government are sending him instructions by telegraph to take all necessary measures for the protection of the missionaries.

Mr. Thornton to Mr. Hoppin.

FOREIGN OFFICE, *December 10, 1880.*

DEAR MR. HOPPIN: I inclose a letter to Mr. Lowell concerning the missionaries at Oroomiah. A previous letter to Mr. Lowell on the same subject is gone to Lord Granville for his signature, and will reach your legation in due course. It states that instructions had been sent to Her Majesty's minister at Teheran, in accordance with Mr. Lowell's wishes.

In the mean time a telegram has been received in reply; and we think you may be glad to possess the information without further delay.

Perhaps you will kindly explain this to the minister.

Believe me, &c.,

C. CONWAY THORNTON.

No. 4.

Mr. Lowell to Mr. Evarts.

[Telegram.]

LONDON, *December 11, 1880.*EVARTS, *Secretary, Washington:*

British minister in Persia has intervened for protection of missionaries. Persian Government has instructed its representative at Oroomiah to this effect.

LOWELL, *Minister.*

No. 5.

*Consul-General Abbott to Mr. Thomson.*TABREEZ, *December 10, 1880.*

SIR: I had this day the honor to send your excellency the following cipher telegram, marked No. 14:

"American missionaries in their last letters to me state that their relations with Persian authorities at Oroomiah are cordial, and that the false reports regarding them had greatly subsided. On receipt of your telegram I had interview with foreign office agent, who promised to communicate with Veli Ahd, and that instructions on subject would be sent immediately by express messenger to Sepah Salar, who was very probably already at Oroomiah."

During the investment of Oroomiah by the Kurdish insurgents the American missionaries were placed in a very difficult position. Sheikh Obeidullah encamped with his army outside the town, in the immediate vicinity of the college buildings, and it would have been the height of imprudence if the missionaries had assumed a demeanor of open hostility towards him, or failed to take advantage of the friendly feelings he professed for them. But they were careful, at the same time, to give convincing proofs that their sentiments towards the Persian authorities were as cordial as ever and remained unimpaired. They behaved throughout with unexampled loyalty. Every communication they received from the sheikh was, at my suggestion, made known to the governor of Oroomiah; and when an assault upon the town seemed imminent they afforded shelter to as many of their Persian neighbors as their premises in the city would accommodate. This was done to remove the erroneous impression that they were only anxious to save Christians.

Monseigneur Cluzel, the French archbishop, having invoked my protection for himself and the members of the Lazarist mission, I sent a message to the sheikh on their behalf, and the Sisters of Charity were invited by the American ladies to reside with them at the college till the danger was over, but did not accept the invitation. The Union Jack floated side by side with the Stars and Stripes over the college buildings, and an inscription in Persian was affixed to the gates, "The residence of the English consul and the American missionaries."

Upwards of 300 Nestorians took refuge within the precincts of the American college, and a large number of Persians. The mission house in town was held by the Rev. Mr. Whipple, at considerable risk to his life.

I take this opportunity of stating officially that such reports as those which have been circulated to the prejudice of the American missionaries are mischievous slanders, completely devoid of truth. The United States have every reason to be proud of men who, at all times conspicuous for their practical piety, displayed at Oroomiah, amidst famine, pestilence, and war, a coolness and pluck which will never be forgotten by those who were present during that season of trial.

In making representations to the Azerbaijan authorities on behalf of the missionaries, I have brought the preceding facts to their notice, and intimated that any molestation offered to those gentlemen or their families would be viewed with grave displeasure by Her Majesty's Government.

I have, &c.,

WILLIAM G. ABBOTT.

It was only by the kindly intervention of the British Government that the American missionaries were saved from extreme peril. There are about sixty American citizens laboring as missionaries of the Presbyterian Board of Foreign Missions, and they are located at different points in Persia. Other American citizens are engaged in trade at several points in the country.

Regarding the commercial interests to be promoted by more intimate relations with Persia, the Hon. John A. Kasson, minister to Austria, uses the following language in a communication to the Secretary of State, dated July 13, 1878:

If the United States desired a commercial treaty with the Shah, it is very probable a favorable one could now be obtained, which might be of especial advantage to our cotton manufactures, and to some other branches of trade. If, as is reported in the English journals, they (the United States) are already introducing their cotton fabrics into England, they ought to be able, on equal terms, to supersede the English manufacture in Persia. In the absence of diplomatic or consular representation of our country there, I can give only partial statistics relating to the probable consumption of these or other American articles in that part of Asia. The whole external trade of Persia can only be roughly estimated. It is considered to amount annually to about \$18,000,000 to \$20,000,000, of which some \$12,000,000 are imports against some \$7,000,000 exports. * * * Cotton goods and cotton yarns form a large item of the imports, to which are added cloths and manufactured silks. Doubtless American fire-arms and other specialties would be profitably introduced by special representations of the trade. Tabreez is the principal center of Persian trade, and attracts merchants from Samarcand, Cabul, Bokhara, and Beloochistan. I gather from English statistics that in three years—1873-1875—the average value of English cotton goods annually imported for the Tabreez market was about \$4,000,000. * * * England, France, and Prussia have missions at the Persian capital. To these Austria is about to add a fourth.

It may be added, also, that the article of petroleum is now finding a market in Persia, and that, with proper encouragement and care, an extensive trade in that article might reasonably be expected.

Your committee therefore report herewith as a substitute for the joint resolution (H. Res. 195) a bill providing for the establishment of diplomatic relations with the Government of Persia, and for the appointment of a consul-general and chargé d'affaires, who shall hold his office at Teheran, the capital of Persia, and recommend that the bill do pass.

APPROACHES TO THE NATIONAL CEMETERY AT DANVILLE, VA.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. G. R. DAVIS, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6744.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 5990) to provide for grading and paving the approaches to the national cemetery at Danville, Va., having considered same, respectfully submit the following report:

The bill provides for the expenditure of \$10,000, under the direction of the Secretary of War, and in conjunction with the authorities of the city of Danville, State of Virginia, to grade and pave two streets leading from the city to the national cemetery, and appropriates \$10,000 for this purpose.

It appears that the city of Danville has already expended a large amount in the said improvement to secure easy access to the city cemetery, which lies near the national cemetery.

Your committee are of the opinion that as the government has not been required to construct a road to this national cemetery, and as the citizens of Danville have done so much, that the prayer of this petition should be granted.

The Secretary of War, in transmitting the accompanying letter from the Quartermaster-General, United States Army, suggests certain amendments, which have been embodied in a substitute for the original bill.

The committee report the bill back to the House with the accompanying substitute, and recommend that the substitute do pass.

WAR DEPARTMENT,
Washington City, June 10, 1882.

SIR: I have the honor to acknowledge the receipt of your communication of the 20th ultimo, inclosing House bill 5990, appropriating the sum of \$10,000 to assist the authorities of the city of Danville, Va., in grading and paving the approaches to the national cemetery near said city, and also inclosing the petition of the common council of Danville, asking for an appropriation of the above-named sum for the purpose stated in the bill.

In response to your request for the views of the department in regard to the bill, I beg to invite your attention to the inclosed report on the subject, dated the 7th instant, from the Quartermaster-General, wherein he suggests an amendment to the bill

2 APPROACHES TO NATIONAL CEMETERY AT DANVILLE, VA.

to the effect that the city of Danville should also appropriate a like sum before the work is begun.

Very respectfully,

ROBERT T. LINCOLN,
Secretary of War.

Hon. GEORGE R. DAVIS,
*Chairman Subcommittee of Committee on
Military Affairs, House of Representatives.*

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., June 7, 1882.

SIR: I have the honor to return herewith House bill No. 5990, which provides for grading and paving the approaches to the national cemetery at Danville, Va.

If the two streets referred to in the bill—Jefferson and Loyall—were macadamized, a good approach to the national cemetery would be thereby secured. At present, as is reported to this office, in continuous wet weather these streets are almost impassable. But while the improvement would be of some benefit to the national cemetery, it would unquestionably be of far greater advantage to the city and to the city cemetery, which immediately adjoins the national burial grounds, and it is submitted that some proviso might well be inserted to the effect that the city should also appropriate a like sum before the work is begun. The resolution of the city council simply recites that "the city is desirous of having the above-named streets paved with the assistance of the United States Government."

For the sum of \$20,000 it is believed that a good macadamized road can be built from the business part of the town to the city and national cemeteries; the former is the nearer to the town. If the city is willing to bear a reasonable part of the expense, I recommend that the bill, with the amendment suggested, be favorably considered.

It would perhaps be advisable to secure from the city some stipulation that the streets thus improved should forever remain open and in good repair for public travel to the national cemetery, but beyond this I do not see how the United States can well exercise any control over the public streets of a city. This is a matter which must, of necessity, remain under the jurisdiction of the municipal authorities.

Very respectfully, your obedient servant,

RUFUS INGALLS,
Quartermaster-General, Bvt. Major-General, U. S. Army.

The honorable the SECRETARY OF WAR.

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ROAD TO THE NATIONAL CEMETERY AT NATCHEZ, MISS.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. GEORGE R. DAVIS, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6745.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 5447) to construct a road to the national cemetery at Natchez, Miss., having considered same, respectfully report:

That this bill provides for the appropriation of the sum of \$10,000 to construct a road from Natchez, State of Mississippi, to the national cemetery near that place.

The necessity for the construction of this road is set forth in the following letter from the Quartermaster-General, transmitted by the Secretary of War:

WAR DEPARTMENT,
Washington City, June 9, 1882.

SIR: I have the honor to acknowledge the receipt of your letter of the 20th ultimo, inclosing the bill (H. R. 5447) to construct a macadamized road from the city of Natchez, Mississippi, to the national cemetery, near that city, and requesting information concerning the necessity of such a road, character and extent of said cemetery, and the estimated cost of constructing said road.

In reply, I beg to invite your attention to the inclosed report on the subject, dated the 7th instant, from the Quartermaster-General, which contains the information requested.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
Secretary of War.

HON. GEORGE R. DAVIS,
Chairman subcommittee Committee on Military Affairs, House of Representatives.

WAR DEPARTMENT, QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., June 7, 1882.

SIR: I have the honor to return herewith House bill No. 5477, authorizing the construction of a road to the national cemetery at Natchez, Miss.

This cemetery, which embraces an area of 11 acres and contains the remains of 3,000 soldiers, is about one mile and a quarter from the corporation limits, is in admirable order, and is visited a great deal by the citizens of the place.

The cemetery is at present reached by a dirt road, in fair condition in dry weather, but, like other roads in that locality, very bad during the rainy season. This means of approach, properly graded, drained, and graveled, would make a very fine road. It runs along the top of the bluff bank of the Mississippi River and commands fine views of the river at different points. It is only used for public country travel at the end next the town.

A gravel road would be much cheaper than a macadamized road, and would answer the purpose equally as well. Plenty of good gravel can be obtained in the vicinity,

2 ROAD TO THE NATIONAL CEMETERY AT NATCHEZ, MISS.

and for the amount specified in the bill (\$10,000) it is believed that the road can be built.

With the amendments noted on the inclosed copy, I recommend the bill for favorable consideration.

Very respectfully, your obedient servant,

RUFUS INGALLS,

Quartermaster-General, Bvt. Major-General, U. S. A.

The Hon. SECRETARY OF WAR.

Also by the following petition from 185 business men and citizens of the city of Natchez:

To the honorable the House of Representatives, United States Congress:

The petition of the undersigned citizens of Natchez, State of Mississippi, would respectfully represent that there is in this vicinity, not more than a mile and a half from the most populous portion of the city, a national cemetery, in which are interred a large number of those who lost their lives in the cause of the preservation of the Union.

The nation has collected the remains of those Union soldiers in one of the most beautiful spots in the South, overlooking the "Great River," which flows from the homes of the dead in the West to the Gulf of Mexico, and has there made hundreds of graves of the nation's dead. This beautiful spot, which would be attractive to thousands of visitors, if easily accessible, is now seldom visited, because there is no easy means of access. We would therefore respectfully ask that an appropriation of a few thousand dollars be made for the purpose of putting the road to the national cemetery in good order by grading and covering the same with gravel (which is easily obtainable within the city limits) to the depth of six inches over the entire width, which could be done at a reasonable expense.

And as in duty bound your petitioners would ever pray, &c.

Your committee find that the same necessity and like reasons exist for authorizing this improvement that have been deemed sufficient in similar cases heretofore considered by the committee; and they report this bill back to the House with the accompanying substitute, with recommendation that the substitute do pass.

HENRY Z. BLINN.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STEELE, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6684.]

The Committee on Military Affairs, to whom was referred the bill H. R. 6684, having considered the same, respectfully report:

Henry Z. Blinn, it appears from reliable information (affidavits, certificates, and oral testimony), was duly enlisted into the service on the 5th day of August, 1862, as a soldier in the Indiana Volunteers, for three years or during the war, but before he was mustered into the service, on the next day, August 6, 1862, while acting in obedience to orders from the captain of his company, he was so injured by the premature discharge of a cannon as to render him unable to appear for muster with his comrades. It also is in evidence that the injuries were so severe as to prevent Blinn from reporting to his company again until about October 1, 1862, when he reported to his captain, with his arm (which had been broken) in a sling. The captain of his company, recognizing Blinn as a soldier of his company, issued to him a proper allowance of clothing and rations, and continued to do so until the 5th day of October, 1862, when he (Capt. James A. Stretch) took the responsibility of ordering him home, whither he went, and remained until he sufficiently recovered to enlist in another company and regiment, as a musician, and in which capacity he served until the close of the war. In view of the fact that it was held during the war that where a man voluntarily signed an agreement to enter the service (an enlistment paper) he was thereby held for the service, your committee are of the opinion that the bill under consideration is only giving to Blinn the record and pay to which he is justly entitled; and therefore, after calling attention to the following affidavits, as specimens from which these conclusions are derived, recommend the passage of the bill:

STATE OF INDIANA,
Grant County, ss:

On the 12th day of November, 1881, personally appeared before me, a notary public in and for said county and State, Henry Z. Blinn, who, being duly sworn according to law, deposes and says:

In relation to his matter to amend war record, as more fully set forth in his petition accompanying this affidavit:

That when he enlisted, as alleged, he was only about eighteen years of age. When he signed his name to the enlistment paper, said Captain Stretch, as such recruiting officer, administered an oath to him such as was prescribed by law for mustering men

into the service, and he, to all intents and purposes, believed that he was a soldier regularly in the military service of the United States.

And it was by said Captain Stretch's orders that he and others were engaged in loading said cannon when he received his said injuries, and at that time believed it was his duty to obey the orders so given him, as he recognized said Captain Stretch as his superior officer, and knew no different.

After affiant had so recovered from his said injuries so as to be about he went to Indianapolis, about October 1st, 1862, where said company and regiment were rendezvoused, and insisted upon being received in said company. Said captain gave him a uniform; he remained in camp with the company some four or five days, when said Stretch informed him that he could not receive him by reason of his injuries, as affiant at that time was carrying one arm in a swing, that had been broken by said premature explosion, and affiant returned to his home.

Subsequently affiant enlisted and served as a musician in Company I, 118th Indiana Vols., from September 3d, 1863, to March 4th, 1864, and again enlisted and served as a musician in Co. A, 139th Indiana Vols., from June 5th, 1864, to September 29th, 1864, and subsequently enlisted and served as a musician in Company D, 153d Indiana Vols., from February 1st, 1865, to September 4th, 1865. He most respectfully submits his claim.

HENRY Z. BLINN.

Subscribed and sworn to before me this 12th day of November, 1881, and I certify that the foregoing affidavit was read over and explained to affiant before swearing, and the affiant is personally known to me to be the person he represents himself to be.

[SEAL.]

JOHN A. KERSEY,
Notary Public.

STATE OF INDIANA,
County of Grant, ss:

In the matter of Henry Z. Blinn, late enlisted man, of Co. A, 90 Ind., to amend war records, &c.

Personally came before me, a notary public in and for aforesaid county and State, John W. Hurley, aged 40 years, citizen of the town of Marion, county of Grant, State of Indiana, well known to me to be reputable and entitled to credit, and who, being duly sworn, declared in relation to aforesaid case as follows:

That he is personally acquainted with said Blinn. Affiant and said Blinn were raised boys together near said town of Marion, where both have resided until the present. Affiant was present on the 5 day of August, 1862, in said town of Marion, and saw the said Blinn sign his name to a proper enlistment paper in the hands of James A. Stretch, to serve for the period of three years in the 5th Indiana Cavalry. Said Stretch was recruiting a squad of men with a view of becoming captain of a company in said reg't, and subsequently, upon the organization of said reg't, was commissioned as such in Company A of said regiment.

On the 6th day of August, 1862, affiant and said Blinn, and a number of others who had so enlisted in command of said Stretch, started for Wabash, Ind., a distance of twenty miles, for the purpose of going to camp. Upon nearing said town of Wabash, by the premature discharge of a cannon, said Blinn was injured as to disqualify him for the service at that time, and was not mustered into said regiment. Affiant went to Wabash with a view to enlist in said compa'y, and did on the next day following said injury, being the 7th day of August, 1862. Said Blinn was loading said cannon by direction of said Stretch, to affiant's personal knowledge, and was an eye-witness to the injury. He further declares that he has no interest in said case, and is not concerned in its prosecution, and is not related to said applicant.

JOHN W. HURLEY.

Sworn to and subscribed before me this day by the above-named affiant, and I certify that I read said affidavit to said affiant and acquainted him with its contents before he executed the same. I further certify that I am in no wise interested in said case, nor am I concerned in its prosecution, and that said affiant personally known to me; that he is a creditable person, and so reputed in the community in which he resides.

Witness my hand and official seal this 23 day of November, 1881.

[SEAL.]

JOHN A. KERSEY,
Notary Public.

(Certificate of official character on file in department.)

STATE OF MISSOURI,
County of Buchanan, ss :

In the matter of Henry Z. Blinn, late enlisted man of Company A, 5th Ind. Cavalry,
to amend war record.

Personally came before me, a clerk County court in and for aforesaid county and State, Joseph Culbertson, aged 37 years, citizen of the town of Willow Brook, county of Buchanan, State of Missouri, well known to me to be reputable and entitled to credit, and who, being duly sworn, declares, in relation to aforesaid case, as follows:

That he personally knows Henry Z. Blinn. Affiant and said Blinn were raised boys together near Marion, Grant County, Indiana; that on or about the 5th day of August, 1862, affiant and said Blinn, in the presence of each other and at the same time, in said town of Marion, subscribed their names to an enlistment paper to serve for the period of three years in a cavalry company that was being recruited for the 5th Indiana Cavalry, which was subsequently lettered as Company A in said regiment; that said enlistments were made at the solicitation of one James A. Stretch, a recruiting officer, and in his presence; that he was subsequently commissioned as captain of said company; that on the day following said enlistments, as this affiant and said Blinn, and a number of other recruits, were approaching the town of Wabash, in Indiana, under command and in charge of said Captain Stretch, said Blinn and this affiant were seriously injured by the premature discharge of a cannon that they were assisting in loading, by order and direction of said Captain Stretch. Affiant and said Blinn each lost an eye, and received other bodily injuries, such as to prevent them from being mustered into said service in said company and regiment. He further declares that he has no interest in said case, and is not concerned in its prosecution, and is not related to said applicant.

JOSEPH CULBERTSON.

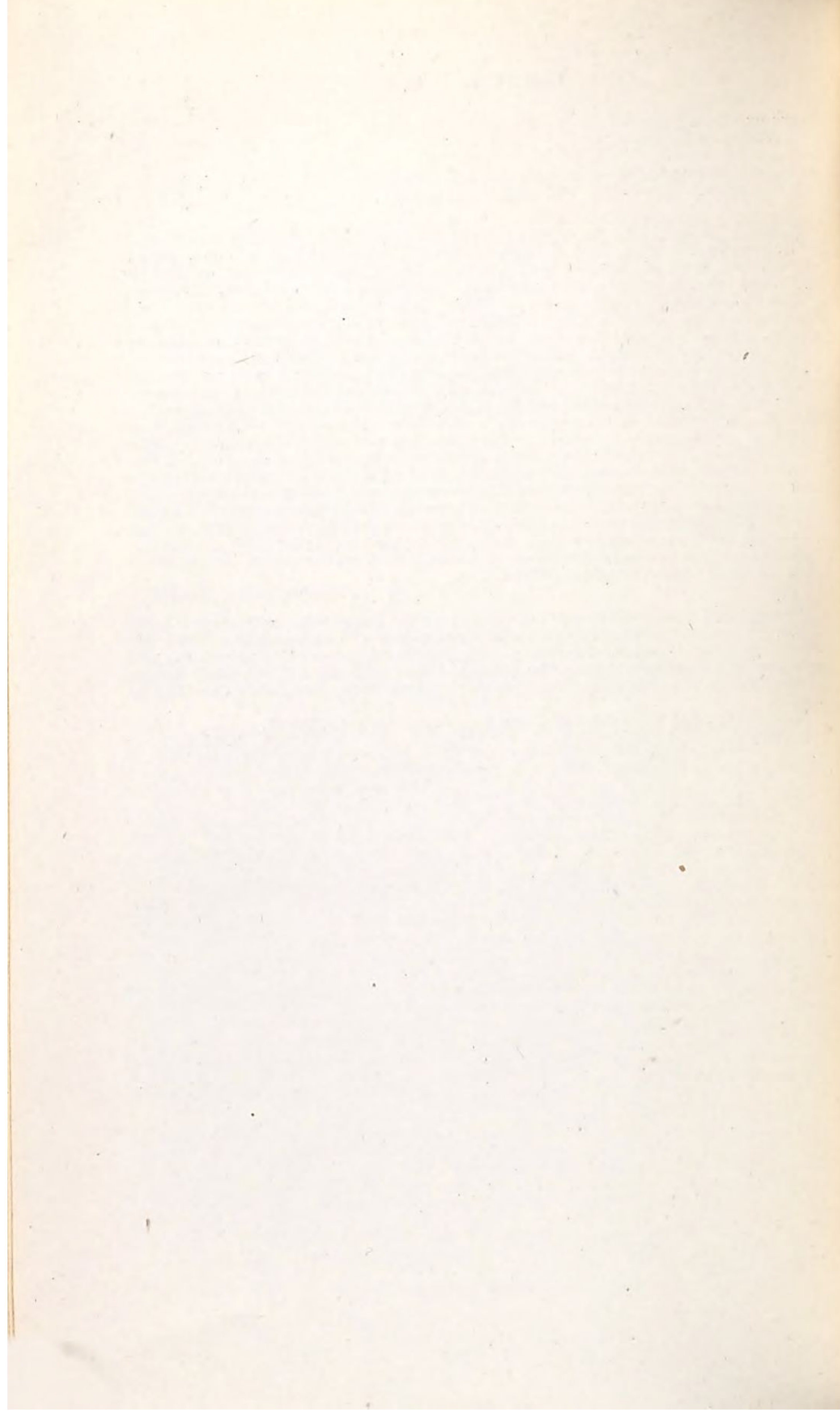
Sworn to and subscribed before me this day by the above-named affiant, and I certify that I read said affidavit to said affiant and acquainted him with its contents before he executed the same. I further certify that I am in no wise interested in said case, nor am I concerned in its prosecution, and that said affiant personally known to me; that he is a creditable person, and so reputed in the community in which he resides.

Witness my hand and official seal this 26th day of November, 1881.

[SEAL.]

E. V. RILEY,
County Clerk.

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AUTHORIZING CHARLES DWIGHT SIGSBEE, U. S. N., AND
JOSEPH R. HAWLEY TO ACCEPT FOREIGN DECORA-
TIONS.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be
printed.

Mr. B. W. HARRIS, from the Committee on Naval Affairs, submitted
the following

REPORT:

[To accompany H. Res. 194.]

The Committee on Naval Affairs, to whom was referred House reso-
lution 194, authorizing Lieut. Com. Charles Dwight Sigsbee, U. S. N., to
accept a decoration from the Emperor of Germany, and authorizing
Joseph R. Hawley to accept decorations from the Governments of the
Netherlands and of Japan, respectfully recommend the passage of the
same.

The above resolution passed the Senate April 12, 1882, and we respect-
fully ask the concurrence of the House thereto.

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JOHN W. SAVILLE.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DAVIDSON, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany bill H. R. 5442.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 5442) authorizing the President of the United States to appoint Assistant Engineer John W. Saville a passed assistant engineer on the retired list of the Navy, having considered the same, submit the following report:

The facts in this case are as follows:

Mr. Saville entered the service October 28, 1862, as third assistant engineer; was wounded at Fort Fisher, on board the U. S. S. *Canonicus*; also wounded in the first fight with the *Albemarle*, on the Roanoke, near Plymouth, N. C. He superintended the building of machinery of U. S. S. *Monocacy*, at Baltimore, and proceeded to China on duty in said vessel; had served out the three years of sea service, when he was entitled to promotion to passed assistant engineer March 15, 1867; his class was not promoted until January 1, 1868, at which time he was still attached to the U. S. S. *Monocacy* in the East Indies. He appealed to Admiral Rowan, commanding squadron, to be ordered home for examination, but was informed by the admiral that his services could not be dispensed with. At this time, and for some subsequent period, Mr. Saville is shown by the evidence submitted to have been physically fitted to pass the required examination. He was continued on duty in the East Indies twenty-eight months and nine days after he was entitled to the promotion herein asked for, during the latter portion of which time he lost his health in the line of duty, and was finally ordered home sick, and placed on the retired list February 1, 1871, as second assistant engineer, with the highest rate of pay of that grade, as physically disqualified for duty on the active list, on the ground that his disability arose from illness contracted in the line of duty.

In view of the above facts, your committee are of the opinion that Mr. Saville should be placed on the retired list of the Navy as passed assistant engineer, with the retired pay of that grade, from the date of his retirement as assistant engineer, and the committee therefore recommend the passage of the accompanying bill.

UMATILLA INDIAN RESERVATION LANDS IN OREGON.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

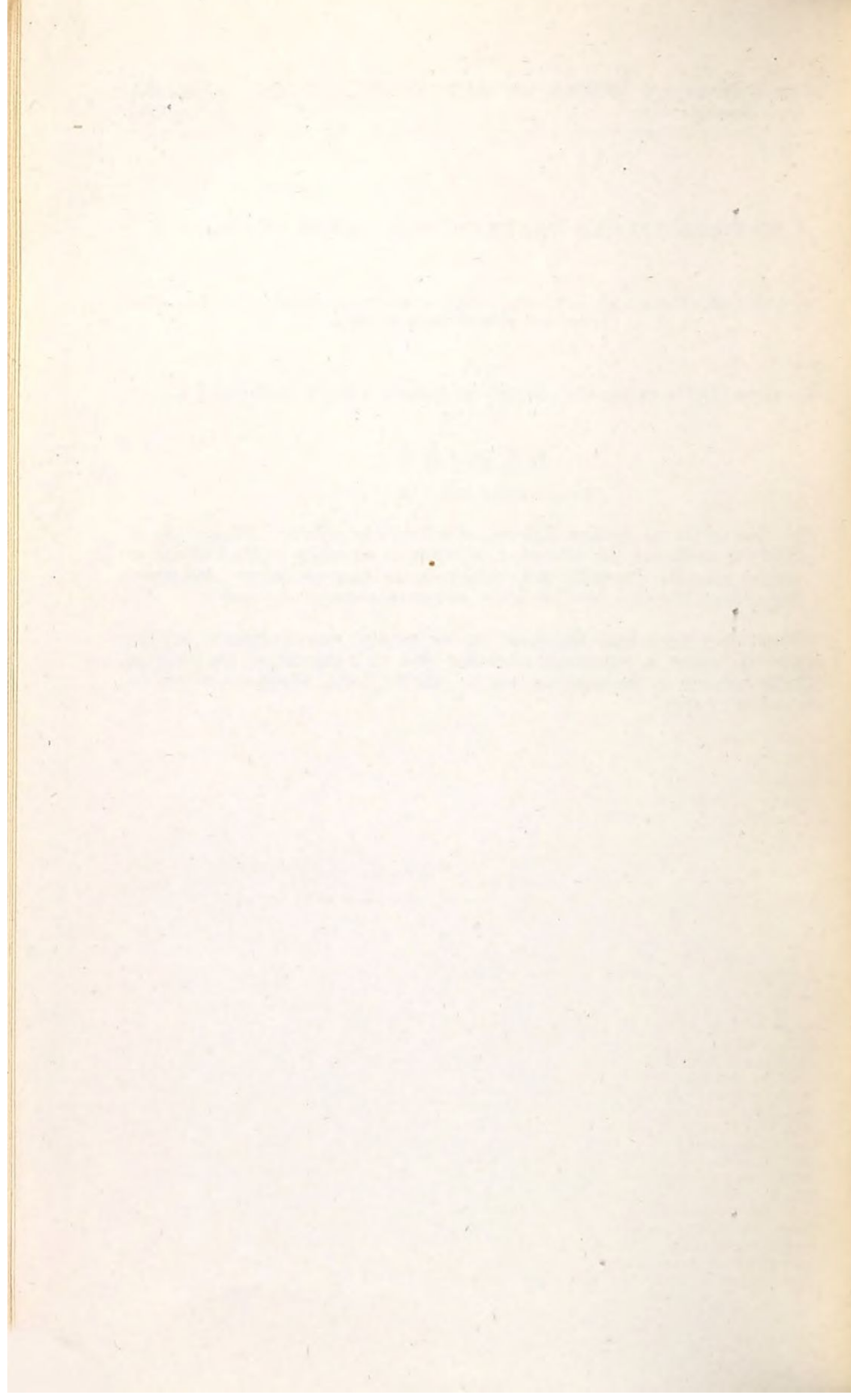
Mr. AINSLIE, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6746.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 2579) to authorize the allotment of lands in severalty to the Indians residing upon the Umatilla Reservation in the State of Oregon, and granting patents therefor, and for other purposes, respectfully report:

That they have had the same under careful consideration, and beg leave to report a substitute therefor and to recommend its passage. The substitute is the same as Senate bill No. 1434, which is now on the Speaker's table.



INDIAN TRADERS.

JULY 15, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. HASKELL, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6611.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 6611) to amend section 2133 of the Revised Statutes, in relation to Indian traders, respectfully submit the following report:

Section 2133 of the Revised Statutes of the United States, which this bill seeks to amend, is as follows:

SEC. 2133. Any person, other than an Indian, who shall attempt to reside in the Indian country as a trader, or to introduce goods, or to trade therein without such license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of five hundred dollars.

The necessity for the amendment of the section above quoted is best shown and fully appears in the letter of the Hon. Commissioner of Indian Affairs, under date of July 8, 1882, given in response to a communication from this committee for advice on the subject-matter of this bill, which letter is appended hereto. For the reasons therein set forth the committee recommend the passage of the bill.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, July 8, 1882.

SIR: Learning that the subcommittee in charge of bill H. R. 6611 desired an expression from me to accompany their report, I beg to say that, as proposing an amendment to statute section 2133, regulating trade with Indians, the bill has my entire approval.

My first reason for such approval is, that the ambiguous wording of the statute in question has given rise to contradictory rulings, some favoring half-breed traders, some discountenancing them. This state of things has led to complaints and charges from one side, and denials from the other, involving a vast amount of correspondence and investigations, at a great expense to the government and a serious interference with the real work of this department. Another reason is the encouragement at present given to unprincipled white men availing themselves of the permission given to half-breeds to trade. Men whose character is such that they never could obtain a license use some half-breed as their instrument, and under his name supply goods, own buildings, and secure profits, while they break down all management, evade responsibility, and defy the efforts of the department to protect the Indians from extortion or illicit traffic.

Another reason for favoring this amendment is the gross injustice done to legitimate traders by the present system. This department regards the tradership system as material to the welfare of the Indians and the continuance of peaceful relations between them and the general government. Hence all the rules and regulations prescribed for traders, the scrutiny of their character, and the bonds required of them. Assuming

their positions under such circumstances, it is but just that they should be assured of an opportunity to enjoy commensurate advantages, and it seems to me unjust that such traders should find themselves confronted by an unscrupulous, irresponsible set of men, who make use of some half-breed to compete with the regular trader and drive him from the field. The man under bond to act in all things so as to please the government and benefit the Indians sees his prospects destroyed by men who are not under bond, and who are encumbered by no moral or legal obligations. It is the duty of the government to sustain the legitimate trader and not to reduce his appointment to a farce.

The amendment proposed by this bill will, I think, give definiteness to the statute and settle a most vexatious question. Without it, or something like it, we shall lose proper control over the trade with Indians, by which they in the end would be the sufferers.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

Hon. D. C. HASKELL,
Chairman Committee on Indian Affairs, House of Representatives.

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PUBLIC BUILDING AT MAYSVILLE, KY.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. FORD, from the Committee on Public Buildings and Grounds, submitted the following

R E P O R T :

[To accompany bill H. R. 6747.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 6747) for the erection of a public building at Maysville, Ky., having considered the same, respectfully report :

The city of Maysville, Ky., has a population of 6,000; is the terminus of the eastern division of the Kentucky Central Railroad; a railroad is being built through the city to connect the Chesapeake and Ohio Railroad with Newport, Covington, and Cincinnati. Maysville is a manufacturing point of considerable importance, its wealth as such increasing rapidly. An internal-revenue collectorship is established at this place, and through this agency the government is now deriving a revenue of about \$150,000 annually. We are informed by the gentleman, Mr. Phister, representing the district in which Maysville is situated, that suitable buildings for the use of the revenue collector and for the accommodation of the business of the post-office cannot be rented by the government; those now being used are not suitable, and he urges with force of argument that this difficulty must become more apparent as business increases in volume and importance.

The bill of the House of Representatives (505) does not designate any amount, but merely authorizes the Secretary of the Treasury to purchase ground and have erected thereon a building suitable for the use of revenue collector, post-office, &c. We report the accompanying substitute, limiting the cost of ground and building to \$30,000.

THE UNIVERSITY OF CHICAGO
LIBRARY

1891-1892

THE UNIVERSITY OF CHICAGO
LIBRARY

THE UNIVERSITY OF CHICAGO
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1891-1892

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PUBLIC BUILDING IN THE CITY OF AUGUSTA, ME.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. LEWIS, from the Committee on Public Buildings and Grounds, submitted the following

R E P O R T :

[To accompany bill H. R. 6748.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 4841) for the erection of a public building at the city of Augusta, in the State of Maine, would respectfully report:

That Augusta is the capital of the State, with a population of 8,666, showing a small increase during the last decade; that her post-office receipts for 1879 were (gross), \$51,440; for 1880, \$66,636; for 1881, \$97,907; showing a large increase each year. We also find, in order to handle this vast mail, they are compelled to occupy two separate buildings, more than 300 feet apart, which is both inconvenient and expensive to the government. There is an estimated annual distribution at this point of \$2,500,000, on account of pensions.

The business interests of this section of the State demand that at least one term of the United States courts should be held here.

We further find large commercial interests centered here in the manufacture of cotton, lumber, boots, shoes, &c., with a fine water-power and good railroad facilities.

We also find that the government is paying an annual rental for the very inadequate accommodations now received the sum of \$3,300.

Your committee would therefore recommend that substitute for House bill No. 4841, accompanying this report, do pass, limiting the cost of said building and grounds when completed to the sum of \$100,000.

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PUBLIC BUILDING AT SACO, ME.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. LEWIS, from the Committee on Public Buildings and Grounds, submitted the following

R E P O R T:

[To accompany bill H. R. 6749.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 4837) to provide for the erection of a public building at the city of Saco, State of Maine, submit the following report:

That this customs district was established by act of Congress, March 2, 1799, since which time Saco has been a port of entry. The district embraces within its limits about 100 miles of seacoast, bordering the cities of Saco and Biddeford and the town of Scarborough. The cities of Saco and Biddeford contain a population of 19,048. The business is principally cotton manufacturing, which is carried on to a large extent and consuming a large amount of Southern cotton.

The population of Saco and Biddeford increased, from the census of 1870 to 1880, from 16,037 to 19,048, showing a very handsome growth. The number of vessels owned in the district June 30, 1881, at date of last report, was 22, consisting of schooners, sloops, and steamers. There are now two passenger, four freight, and one towing steamer. The number of entrances and clearances of foreign vessels for the year ending December 31, 1881, was 11. The number of arrivals and departures at this port of vessels engaged in the coastwise trade, with cargoes, for the same period of time was more than 200, and we are informed by merchants interested in that trade here that the prospect is that the business will be largely increased the present year, necessarily increasing the customs business at the port. The vessels above referred to brought to this port cargoes of cotton from Savannah, Ga., and Mobile, Ala., iron for the use of Saco Water Power Machine Shop, coal, lime, lumber, and gypsum, and carried therefrom principally cargoes of ice. The annual rental now paid for customs purposes is \$100, with \$26.25 allowance for fuel. The valuable records have accumulated to a considerable extent, such as the records of bills of sale and mortgages of vessels, showing the title to a large amount of property, together with those of bonds of enrollment and licensing of vessels, rendering it necessary that the government should have a place of safety of its own for such that will be permanent, and not liable to be moved and trucked about from year to year or consumed by fire.

The gross receipts from the post-office for 1881 were \$5,963.52. Net receipts to the government, \$3,238.50. The expense to the government for rent, light, &c., for the post-office is \$243 per annum, and for this

amount they are compelled to occupy very unsafe and inadequate quarters.

From the foregoing facts your committee would recommend the passage of substitute for original bill, herewith returned, the cost of building and grounds, when completed, not to exceed the sum of \$50,000.

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MONUMENT TO MARY WASHINGTON.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. J. HYATT SMITH, from the Committee on Public Buildings and Grounds, submitted the following

R E P O R T :

[To accompany bill H. R. 4135.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 4135) for the completion of the monument to Mary, the mother of Washington, at Fredericksburg, Va., respectfully report as follows:

In 1831 an effort was made by the citizens of Fredericksburg, Va., to raise, by contribution, sufficient funds to erect a monument to Mary, the mother of Washington. About \$3,000 was so raised for the purpose, but was entirely lost by the failure of the person in whose hands it had been placed for safe keeping. Then a wealthy and patriotic merchant of New York, a Mr. Burrows, undertook to erect the monument with his own private funds. He promptly commenced work, and the corner-stone was laid, in 1833, by General Andrew Jackson, then President of the United States. Before the monument, however, was completed, Mr. Burrows failed in business, lost his fortune, and the work ceased.

On the 29th of January, 1874 (Forty-third Congress), a resolution passed, directing the Joint Select Committee on the Washington National Monument to inquire and report as to the practicability of completing the unfinished monument at Fredericksburg. (House Journal, 1873-'74, p. 340.) On June 1, 1874, the committee reported favorably, and also reported a bill appropriating \$12,000 to complete the monument. The bill, however, was not reached during the session, and no action was taken thereon.

The present structure is of marble, and is 16½ feet high, and 10 feet at the base, and was to have been surmounted by a marble shaft 17 feet high. The marble has been very much defaced and broken by relic-hunters, principally during the late war, and may have to be worked over again and made smaller, or removed altogether and other material used in its stead. The shaft, in a rough state, is lying near the monument, and can be used for the purpose for which it was originally intended. Should it be deemed advisable to select granite as the material with which to finish the work, it can be obtained on the Rappahannock River, about 1½ miles from the site of the monument, and can be floated down a canal to within 200 yards of the place.

Your committee recommend the passage of the bill with the amendments reported.

HENRY C. SPALDING.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SPOONER, from the Committee on Patents, submitted the following

REPORT:

[To accompany bill H. R. 6750.]

The Committee on Patents, to whom was referred the bill (H. R. 5769) to extend the term of a patent granted to Henry C. Spalding for an improvement in metallic cartridges, having considered the same, respectfully report :

That on the 24th day of January, 1865, letters patent of the United States were issued to Henry C. Spalding for a valuable improvement in metallic cartridges. Said invention consists in lining the interior of metallic cartridge-shells with an insulating coating, and thereby preventing the powder filling of such shells from coming in contact with their metallic casing.

Mr. Spalding's attention was first called to the matter of this invention several years prior to the issue of said letters patent, when the general introduction into use of breech-loading arms, and the consequent necessity for the use of metallic cartridges therewith, led him to reflect upon the probable deterioration of such cartridges kept in store as reserves of ammunition, because of the fact that the saltpeter, sulphur, and charcoal, component parts of gunpowder, were certain to induce galvanic action when placed in contact with the copper case and the leaden bullet of the cartridge. He then lined several shells with the compound known as collodion, and during more than three years thereafter kept them in his possession for the purpose of ascertaining the effect of the collodion upon the copper and the powder. Finding that there was no resulting action which could injure the efficiency of the cartridge prepared in that manner, and that his invention secured the result sought, Mr. Spalding, on the 2d day of November, 1864, applied for a patent therefor, which was duly issued to him as aforesaid. He made diligent efforts to induce manufacturers of cartridges to adopt said improvement, but without success, because of his inability to satisfy them that said galvanic action was likely to occur. Consequently he was unable to introduce his said invention into use, he being without means to manufacture upon his own account, and being unable to satisfy others of the value and necessity thereof.

Subsequently, in 1873, Mr. Spalding became financially embarrassed, and was thereafterwards compelled to make a general assignment in bankruptcy for the benefit of his creditors, and has never received any income or compensation whatsoever from or on account of the said invention.

Your committee find that said invention is a valuable one; that said inventor has received no compensation therefor, and has been prevented by misfortune, and without fault or neglect upon his part, from introducing the same into use during the life of said patent; and that the public has never been taxed or paid anything for said invention or for the use thereof. They therefore recommend the passage of the accompanying substitute bill.

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JAMES J. JOHNSTON.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. VANCE, from the Committee on Patents, submitted the following

R E P O R T :

[To accompany bill H. R. 6751.]

The Committee on Patents, to whom was referred the bill (H. R. 6552) for the relief of James J. Johnston, submit the following report:

Mr. Johnston is the inventor of a process and apparatus for combining superheated steam and air with the vapors evolved from hydrocarbon oils, for the production of illuminating gas and the generation of heat to be used in the arts and for general purposes, for which a patent was granted him in 1865, which was subsequently surrendered and a reissue obtained, which was again, on account of imperfections, surrendered, and another reissue was granted on the 13th of August, 1878, in two divisions, designated A and B.

From the date of his discovery down to the present time Mr. Johnston states that he has been indefatigable in testing and perfecting his invention; that he has been entirely successful in accomplishing all that he claims; that he has expended thousands of dollars in money without having received any return, and that now, when he is prepared to demonstrate the advantages and economy to the public of his invention, he finds his patent within four months of its legal limit.

It is apparent to the committee that this is not one of the ordinary class of patents which Congress is asked to extend. It does not involve the manufacture of an article to be thrown upon the open market, and upon which the purchaser is obliged to pay a tax in the form of a royalty, but it is designed to produce light and heat for general and common use at a greatly decreased cost to the consumer.

It appears, also, that in his unaided efforts to test and perfect his invention Mr. Johnston has exhausted his means, has received no return whatever, has brought embarrassment upon himself, and this without any lack of diligence on his part, but in the encounter of such discouragements as are common to men who have made discoveries that are valuable to the public.

The committee, therefore, in view of the fact that if time is given the inventor may demonstrate the practicability of economizing the cost of essential elements, and that he may reasonably ask for an extension of his patent to enable him to recover his losses, and to enjoy the credit due to those whose efforts have resulted in a common benefit, earnestly favor early action on the bill reported as a substitute, and recommend its passage.

JEARUM ATKINS.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. VANCE, from the Committee on Patents, submitted the following

REPORT:

[To accompany bill H. R. 6752.]

The Committee on Patents, to whom was referred the petition of Jearum Atkins, asking to be remunerated for his invention of the first self-raker for harvesting machines, submit the following report:

That the claim and the grounds on which it is based may be more fully understood, we quote the petition entire, as follows:

Your petitioner, Jearum Atkins, of Washington, D. C., respectfully represents:

That he believes himself to have been the inventor of the first successful automatic rake for harvesters that has ever been known, for which he obtained a patent, dated December 21, 1852, and that this invention embodied the first application to said machines of certain principles which are indispensable to their practical operation, and that it was therefore in these respects the legitimate progenitor of the whole race of machines, which, though differing in form and many of their features, derive their vital powers from the creation of his own inventive faculties, and are now rendering the most important and necessary aid to one of the chief industries of the commonwealth. He also states that from protracted *and utterly prostrating illness*, and from other causes equally beyond his control, he has been prevented from deriving any but the most meager advantage from his said invention, all of which are more fully shown by the papers herewith filed. (See Exhibits A, B, C, and D, annexed hereto.)

He further states that an application for an extension of his said patent, based upon the above facts, was made in due time to the Commissioner of Patents, the fee required, \$50, having been paid into the Treasury, and all the other requirements of the law fully complied with, and that the Commissioner, after a proper examination of his case, decided favorably upon said application, and ordered that the extended patent should be issued. (See Exhibit *a*, hereto annexed.) Subsequently, however, owing to an assignment by your petitioner of a certain interest in his original patent, *but which conveyed no interest in an extension thereof, though, on the contrary, was strictly limited to the original term of fourteen years* (see a copy of said assignment on the files of this case), the Commissioner, by a mistake which he soon after discovered and acknowledged, but when it was too late to retrace his steps, *he having no power to extend the patent after the expiration of its original term of fourteen years, reversed his decision, and the extension of your petitioner's patent was finally rejected.* (See Exhibits N and P, hereto annexed.)

Your petitioner further states that on the 30th of January, 1868, he caused a bill to be introduced in Congress to authorize the Commissioner of Patents to entertain and exercise jurisdiction over a second application for an extension of his patent, in the same manner and with the same effect as if the original term of said patent had not expired, which bill finally became a law March 3, 1871. (See Exhibit J, annexed.) And on the 1st of April, 1871, the Commissioner, in pursuance of said law, did extend your petitioner's patent for 7 years from the date of said extension. (See extended patent on file.)

Almost 19 years had now passed since the first introduction of this invention into use. Nearly 5 years of this time, from the expiration of the original patent, in 1866,

until it was extended in 1871, were spent in the most laborious and exhaustive efforts on the part of your petitioner, in endeavors to procure the passage of a law to authorize such extension, which, when it was finally obtained, owing to the lapse of time, was found to be utterly worthless.

The reason why this patent could not be made available upon being extended after the invention had for 5 years been public property will be at once apparent. The manufacture of these machines had now increased to the most gigantic proportions, millions of dollars being invested in their production, and tens of thousands of machines being annually made and sold throughout the entire country. (See Exhibits E, F, and G, annexed hereto.)

Out of the vast proceeds of this business it was proposed by the manufacturers to expend so much as might be required in defiance of the rights of him who laid the foundation of their fortunes.

Within this time large numbers of patents had been taken out for automatic harvester rakes. Each one of these was claimed by its inventor to be either an improvement upon your petitioner's invention or a radical departure from his original plan. The evidence, however, shows that they were only modifications in form, although embodying the essential principles covered by your petitioner's patent. (See again Exhibits A, B, C, and D, annexed hereto.)

Your petitioner had struck out into a new field of discovery in the art of harvesting by horse power. He had shown the general plan on which automatic rades could be successfully worked by placing all the contrivances by which they might be supported, guided, and controlled on the inner side of the platform, where they could be entirely free from becoming entangled by the cut or non-cut grain.

He constructed a successfully operating machine in this manner, and he was the first one that ever did so. Without this arrangement no automatic rake could be successful, and for this he obtained a patent.

But other inventors have seized upon the same idea, and with various modifications of form have applied it to their own purpose. There are many shapes in which this principle can be embodied and made practical. These, it is claimed, should all rightfully be subordinate to the first and master invention of your petitioner. But they all differ from each other, and it would be contended that the determination of a suit in relation to one would not be conclusive in regard to any of the others. It was thus rendered impossible to derive any income from this patent, except by the prosecution of a multiplicity of expensive and vexatious suits, the cost of which could only be borne by a millionaire, and which no one could be found who was willing to encounter.

It needs no further explanation to show that, for a man who, like your petitioner, had been worn down and impoverished by twenty-four years sickness (Exhibit I) and who had received comparatively nothing for the use of his invention, to cope with such interests and influences as these in the courts, would be but the sheerest impossibility.

Thus was the act of Congress for your petitioner's relief rendered of no avail, and thus was he, by the failure of the agent of the government (the Commissioner of Patents) to extend his patent at the proper time, *which would then have yielded him an income*, not only caused an untold amount of labor, expenditure, and vexation, but deprived of all advantage from that which had cost him most dear, and has been the source of almost incalculable benefit to the country.

THE EXTENSION LEGALLY DUE.

To prove that an extension of this patent was justly and legally due when first applied for, and that it was clearly one of the cases in which it was the express object of the law to grant an extension, we have, first, a large and very satisfactory amount of documentary evidence accompanying the application now on the files of this case. Also the fact, that the Commissioner, after a careful examination of the case, so decided. Again, by his acknowledgment that the refusal of the extension was the result of a mistake, *his former decision was confirmed* (see again Exhibits N and P, annexed hereto), and this decision was *again, and yet again, confirmed by the passage of the law of Congress authorizing the extension and the final issuing of the extended patent in pursuance of such law, upon a second examination, by a succeeding Commissioner.*

And for what did your petitioner pray, when he prayed for the extension of his patent, but for *his rights*; that he might be permitted to enjoy for a little time, *under protection of law, that which was his own*, the creation of his own brains, and his own hands; which by the Constitution, and by the laws of all civilized nations, is recognized as property, *as he would enjoy for all time*, and without any special grant, any other species of property. But even this little was denied him; and this remnant of what he had bestowed upon his country, in his efforts to secure which he had wasted the best energies of his life, and to which he clung as his hope of support in his declining years, was engulfed in a maelstrom, and soon passed forever beyond his grasp.

Your petitioner finally alleges that the wrong which he has sustained at the hands

of the government was not redressed, nor his grievance in any manner abated; neither was the law fulfilled, in letter or spirit, by going through the form of extending his patent five years after the time prescribed by such law for this step to be taken, and long after all that could have been rendered available thereby had ceased to exist.

He further alleges that the promise of protection of his property held out by the government, under which he labored and studied long and weary years, and expended his last shilling in producing this invention, and introducing it into use, and under which he "conveyed the same to the commonwealth forever," has never been fulfilled.

Therefore, upon the broad ground that "the laborer is worthy of his hire," and that for the labor and anxiety of a large portion of his life he has without fault or neglect on his part failed of realizing any adequate remuneration, and believing that the sovereign people who have reaped the benefit of his toil desire to be just, he now most respectfully asks their Representatives in Congress that an appropriation of a reasonable sum be made to him as a remuneration for his services.

JEARUM ATKINS.

The facts stated by the memorialist are well sustained by the accompanying affidavits, which are mostly from men who have occupied high positions under the government; and others of equally good standing.

This was an invention of great ingenuity. It was entirely new, embodying principles of action never before combined in any known mechanism. It did the work of tens of thousands of men in the harvest-field, and thus rendered it possible for this nation to produce tens of millions of bushels of grain that could not otherwise have been produced, and has therefore conferred upon the country almost untold benefits.

In 1842, being then twenty-six years old, petitioner received injuries by a fall from his wagon, from which he was confined entirely to his bed twenty-four years, or until he was fifty years old, being unable to walk or even sit up more than a few minutes at once during all this time. He had been so confined ten years when he obtained his patent, and was not able to walk during its entire lifetime, which rendered it impossible to manage his business successfully.

Petitioner presents in his memorial to Congress, as precedents for the grant of money asked for, the following cases, in which similar grants have been made, both by our own and foreign governments, to inventors of improvements of conspicuous public benefit, who had not been otherwise adequately rewarded.

Robert Fulton, for improvements in steamboats, \$76,300.

Professor Morse, for invention of the telegraph, \$38,000. Morse also received gratuities from several foreign governments, amounting in all to over \$400,000.

Professor Page, for invention of electrical engine, \$20,000.

Willmoth, for application of hydrostatic press to monitors, \$50,000.

Dr. Locke, for discovery of astronomical clock, \$10,000.

Also, several English cases of the same general character, including that of Cartwright, inventor of the power loom, "*who was rewarded by Parliament for what he had done, because he had not been remunerated in the working of his patent.*" (Mr. Carpnel, of England, authority.)

We might quote from such works as Political Economy by John Stewart Mill, and Hindemarch on Patents, to show that these eminent authors favored such public grants in particular deserving cases, but is unnecessary.

It appears from an affidavit by petitioner's attorney, Hon. I. N. Arnold (ex-member of Congress), that he only received about \$7,000, in all, on account of his invention, which, deducting expenses, did not leave a clear profit of more than about \$3,500 or \$4,000.

Petitioner is now at the advanced age of sixty-six years, and is at

present only able to walk about a very little, and, owing to the facts stated, is in very moderate circumstances.

In view of the facts presented the committee deem it but just that the comparatively small sum named in the accompanying bill be awarded to petitioner on account of his public services, and accordingly ask leave to report back the bill, with the recommendation that it pass.

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SALARIES IN THE PATENT OFFICE.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. YOUNG, from the Committee on Patents, submitted the following

REPORT:

[To accompany bill H. R. 6753.]

The Committee on Patents, to whom was referred the bill (H. R. 6753) amendatory of sections 440 and 447 of the Revised Statutes of the United States, having had the same under consideration, beg leave to report the same with amendments, and to recommend its passage.

The work of the Patent Office is rapidly and largely increasing. During the first five months of the year 1881 12,937 applications for patents were received, and for the same period in the year 1882 15,244.

The increase in the receipts of the office has been as marked, and represents a corresponding increase in the work of examination of patents and of clerical labor. The receipts during the first five months of 1881 were \$364,182.10, and for the same period in the year 1882 have been \$428,805.65. At the present ratio of increase the receipts for the first half of the present calendar year will exceed \$500,000.

The work of examination of applications for patents has correspondingly increased.

Every patent, every new printed publication, extends and enlarges the field of research. The extent of this work of examination may be in a measure appreciated when it is considered that the total number of patents of all countries is now very large, viz: United States, 260,000; France, 160,000; England, exclusive of Canada and all other British colonies, 160,000; German Empire, Spain, Italy, Sweden, &c., about 20,000 each.

The annual issue in the United States for the year 1881 was 16,584; in France, England, and the German Empire, about 5,000 each; so that the sum of the annual increase of patents by the nations issuing the largest number is not less than 30,000.

It must be remembered that to these sources of research must be added the vast and growing number of trade-mark and technical journals and the various publications in the arts and sciences. Each year the range of search to be covered in examining each application becomes more extended, and consequently more onerous.

In the early history of this country inventions were comparatively crude, representing the mechanical and technical skill and knowledge

UMATILLA INDIAN RESERVATION LANDS IN OREGON.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. AINSLIE, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6746.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 2579) to authorize the allotment of lands in severalty to the Indians residing upon the Umatilla Reservation in the State of Oregon, and granting patents therefor, and for other purposes, respectfully report:

That they have had the same under careful consideration, and beg leave to report a substitute therefor and to recommend its passage. The substitute is the same as Senate bill No. 1434, which is now on the Speaker's table.

INDIAN TRADERS.

JULY 15, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. HASKELL, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6611.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 6611) to amend section 2133 of the Revised Statutes, in relation to Indian traders, respectfully submit the following report:

Section 2133 of the Revised Statutes of the United States, which this bill seeks to amend, is as follows:

SEC. 2133. Any person, other than an Indian, who shall attempt to reside in the Indian country as a trader, or to introduce goods, or to trade therein without such license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of five hundred dollars.

The necessity for the amendment of the section above quoted is best shown and fully appears in the letter of the Hon. Commissioner of Indian Affairs, under date of July 8, 1882, given in response to a communication from this committee for advice on the subject-matter of this bill, which letter is appended hereto. For the reasons therein set forth the committee recommend the passage of the bill.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, July 8, 1882.

SIR: Learning that the subcommittee in charge of bill H. R. 6611 desired an expression from me to accompany their report, I beg to say that, as proposing an amendment to statute section 2133, regulating trade with Indians, the bill has my entire approval.

My first reason for such approval is, that the ambiguous wording of the statute in question has given rise to contradictory rulings, some favoring half-breed traders, some discountenancing them. This state of things has led to complaints and charges from one side, and denials from the other, involving a vast amount of correspondence and investigations, at a great expense to the government and a serious interference with the real work of this department. Another reason is the encouragement at present given to unprincipled white men availing themselves of the permission given to half-breeds to trade. Men whose character is such that they never could obtain a license use some half-breed as their instrument, and under his name supply goods, own buildings, and secure profits, while they break down all management, evade responsibility, and defy the efforts of the department to protect the Indians from extortion or illicit traffic.

Another reason for favoring this amendment is the gross injustice done to legitimate traders by the present system. This department regards the tradership system as material to the welfare of the Indians and the continuance of peaceful relations between them and the general government. Hence all the rules and regulations prescribed for traders, the scrutiny of their character, and the bonds required of them. Assuming

their positions under such circumstances, it is but just that they should be assured of an opportunity to enjoy commensurate advantages, and it seems to me unjust that such traders should find themselves confronted by an unscrupulous, irresponsible set of men, who make use of some half-breed to compete with the regular trader and drive him from the field. The man under bond to act in all things so as to please the government and benefit the Indians sees his prospects destroyed by men who are not under bond, and who are encumbered by no moral or legal obligations. It is the duty of the government to sustain the legitimate trader and not to reduce his appointment to a farce.

The amendment proposed by this bill will, I think, give definiteness to the statute and settle a most vexatious question. Without it, or something like it, we shall lose proper control over the trade with Indians, by which they in the end would be the sufferers.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

Hon. D. C. HASKELL,
Chairman Committee on Indian Affairs, House of Representatives.

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PUBLIC BUILDING AT MAYSVILLE, KY.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. FORD, from the Committee on Public Buildings and Grounds, submitted the following

R E P O R T :

[To accompany bill H. R. 6747.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 6747) for the erection of a public building at Maysville, Ky., having considered the same, respectfully report :

The city of Maysville, Ky., has a population of 6,000; is the terminus of the eastern division of the Kentucky Central Railroad; a railroad is being built through the city to connect the Chesapeake and Ohio Railroad with Newport, Covington, and Cincinnati. Maysville is a manufacturing point of considerable importance, its wealth as such increasing rapidly. An internal-revenue collectorship is established at this place, and through this agency the government is now deriving a revenue of about \$150,000 annually. We are informed by the gentleman, Mr. Phister, representing the district in which Maysville is situated, that suitable buildings for the use of the revenue collector and for the accommodation of the business of the post-office cannot be rented by the government; those now being used are not suitable, and he urges with force of argument that this difficulty must become more apparent as business increases in volume and importance.

The bill of the House of Representatives (505) does not designate any amount, but merely authorizes the Secretary of the Treasury to purchase ground and have erected thereon a building suitable for the use of revenue collector, post-office, &c. We report the accompanying substitute, limiting the cost of ground and building to \$30,000.

PUBLIC BUILDING IN THE CITY OF AUGUSTA, ME.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. LEWIS, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 6748.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 4841) for the erection of a public building at the city of Augusta, in the State of Maine, would respectfully report:

That Augusta is the capital of the State, with a population of 8,666, showing a small increase during the last decade; that her post-office receipts for 1879 were (gross), \$51,440; for 1880, \$66,636; for 1881, \$97,907; showing a large increase each year. We also find, in order to handle this vast mail, they are compelled to occupy two separate buildings, more than 300 feet apart, which is both inconvenient and expensive to the government. There is an estimated annual distribution at this point of \$2,500,000, on account of pensions.

The business interests of this section of the State demand that at least one term of the United States courts should be held here.

We further find large commercial interests centered here in the manufacture of cotton, lumber, boots, shoes, &c., with a fine water-power and good railroad facilities.

We also find that the government is paying an annual rental for the very inadequate accommodations now received the sum of \$3,300.

Your committee would therefore recommend that substitute for House bill No. 4841, accompanying this report, do pass, limiting the cost of said building and grounds when completed to the sum of \$100,000.

PUBLIC BUILDING AT SACO, ME.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. LEWIS, from the Committee on Public Buildings and Grounds, submitted the following

R E P O R T:

[To accompany bill H. R. 6749.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 4837) to provide for the erection of a public building at the city of Saco, State of Maine, submit the following report:

That this customs district was established by act of Congress, March 2, 1799, since which time Saco has been a port of entry. The district embraces within its limits about 100 miles of seacoast, bordering the cities of Saco and Biddeford and the town of Scarborough. The cities of Saco and Biddeford contain a population of 19,048. The business is principally cotton manufacturing, which is carried on to a large extent and consuming a large amount of Southern cotton.

The population of Saco and Biddeford increased, from the census of 1870 to 1880, from 16,037 to 19,048, showing a very handsome growth. The number of vessels owned in the district June 30, 1881, at date of last report, was 22, consisting of schooners, sloops, and steamers. There are now two passenger, four freight, and one towing steamer. The number of entrances and clearances of foreign vessels for the year ending December 31, 1881, was 11. The number of arrivals and departures at this port of vessels engaged in the coastwise trade, with cargoes, for the same period of time was more than 200, and we are informed by merchants interested in that trade here that the prospect is that the business will be largely increased the present year, necessarily increasing the customs business at the port. The vessels above referred to brought to this port cargoes of cotton from Savannah, Ga., and Mobile, Ala., iron for the use of Saco Water Power Machine Shop, coal, lime, lumber, and gypsum, and carried therefrom principally cargoes of ice. The annual rental now paid for customs purposes is \$100, with \$26.25 allowance for fuel. The valuable records have accumulated to a considerable extent, such as the records of bills of sale and mortgages of vessels, showing the title to a large amount of property, together with those of bonds of enrollment and licensing of vessels, rendering it necessary that the government should have a place of safety of its own for such that will be permanent, and not liable to be moved and trucked about from year to year or consumed by fire.

The gross receipts from the post-office for 1881 were \$5,963.52. Net receipts to the government, \$3,238.50. The expense to the government for rent, light, &c., for the post-office is \$243 per annum, and for this

amount they are compelled to occupy very unsafe and inadequate quarters.

From the foregoing facts your committee would recommend the passage of substitute for original bill, herewith returned, the cost of building and grounds, when completed, not to exceed the sum of \$50,000.

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MONUMENT TO MARY WASHINGTON.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. J. HYATT SMITH, from the Committee on Public Buildings and Grounds, submitted the following

R E P O R T :

[To accompany bill H. R. 4135.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 4135) for the completion of the monument to Mary, the mother of Washington, at Fredericksburg, Va., respectfully report as follows:

In 1831 an effort was made by the citizens of Fredericksburg, Va., to raise, by contribution, sufficient funds to erect a monument to Mary, the mother of Washington. About \$3,000 was so raised for the purpose, but was entirely lost by the failure of the person in whose hands it had been placed for safe keeping. Then a wealthy and patriotic merchant of New York, a Mr. Burrows, undertook to erect the monument with his own private funds. He promptly commenced work, and the corner-stone was laid, in 1833, by General Andrew Jackson, then President of the United States. Before the monument, however, was completed, Mr. Burrows failed in business, lost his fortune, and the work ceased.

On the 29th of January, 1874 (Forty-third Congress), a resolution passed, directing the Joint Select Committee on the Washington National Monument to inquire and report as to the practicability of completing the unfinished monument at Fredericksburg. (House Journal, 1873-'74, p. 340.) On June 1, 1874, the committee reported favorably, and also reported a bill appropriating \$12,000 to complete the monument. The bill, however, was not reached during the session, and no action was taken thereon.

The present structure is of marble, and is 16½ feet high, and 10 feet at the base, and was to have been surmounted by a marble shaft 17 feet high. The marble has been very much defaced and broken by relic-hunters, principally during the late war, and may have to be worked over again and made smaller, or removed altogether and other material used in its stead. The shaft, in a rough state, is lying near the monument, and can be used for the purpose for which it was originally intended. Should it be deemed advisable to select granite as the material with which to finish the work, it can be obtained on the Rappahannock River, about 1½ miles from the site of the monument, and can be floated down a canal to within 200 yards of the place.

Your committee recommend the passage of the bill with the amendments reported.

HENRY C. SPALDING.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SPOONER, from the Committee on Patents, submitted the following

REPORT:

[To accompany bill H. R. 6750.]

The Committee on Patents, to whom was referred the bill (H. R. 5769) to extend the term of a patent granted to Henry C. Spalding for an improvement in metallic cartridges, having considered the same, respectfully report:

That on the 24th day of January, 1865, letters patent of the United States were issued to Henry C. Spalding for a valuable improvement in metallic cartridges. Said invention consists in lining the interior of metallic cartridge-shells with an insulating coating, and thereby preventing the powder filling of such shells from coming in contact with their metallic casing.

Mr. Spalding's attention was first called to the matter of this invention several years prior to the issue of said letters patent, when the general introduction into use of breech-loading arms, and the consequent necessity for the use of metallic cartridges therewith, led him to reflect upon the probable deterioration of such cartridges kept in store as reserves of ammunition, because of the fact that the saltpeter, sulphur, and charcoal, component parts of gunpowder, were certain to induce galvanic action when placed in contact with the copper case and the leaden bullet of the cartridge. He then lined several shells with the compound known as collodion, and during more than three years thereafter kept them in his possession for the purpose of ascertaining the effect of the collodion upon the copper and the powder. Finding that there was no resulting action which could injure the efficiency of the cartridge prepared in that manner, and that his invention secured the result sought, Mr. Spalding, on the 2d day of November, 1864, applied for a patent therefor, which was duly issued to him as aforesaid. He made diligent efforts to induce manufacturers of cartridges to adopt said improvement, but without success, because of his inability to satisfy them that said galvanic action was likely to occur. Consequently he was unable to introduce his said invention into use, he being without means to manufacture upon his own account, and being unable to satisfy others of the value and necessity thereof.

Subsequently, in 1873, Mr. Spalding became financially embarrassed, and was thereafterwards compelled to make a general assignment in bankruptcy for the benefit of his creditors, and has never received any income or compensation whatsoever from or on account of the said invention.

Your committee find that said invention is a valuable one; that said inventor has received no compensation therefor, and has been prevented by misfortune, and without fault or neglect upon his part, from introducing the same into use during the life of said patent; and that the public has never been taxed or paid anything for said invention or for the use thereof. They therefore recommend the passage of the accompanying substitute bill.

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JAMES J. JOHNSTON.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. VANCE, from the Committee on Patents, submitted the following

REPORT:

[To accompany bill H. R. 6751.]

The Committee on Patents, to whom was referred the bill (H. R. 6552) for the relief of James J. Johnston, submit the following report:

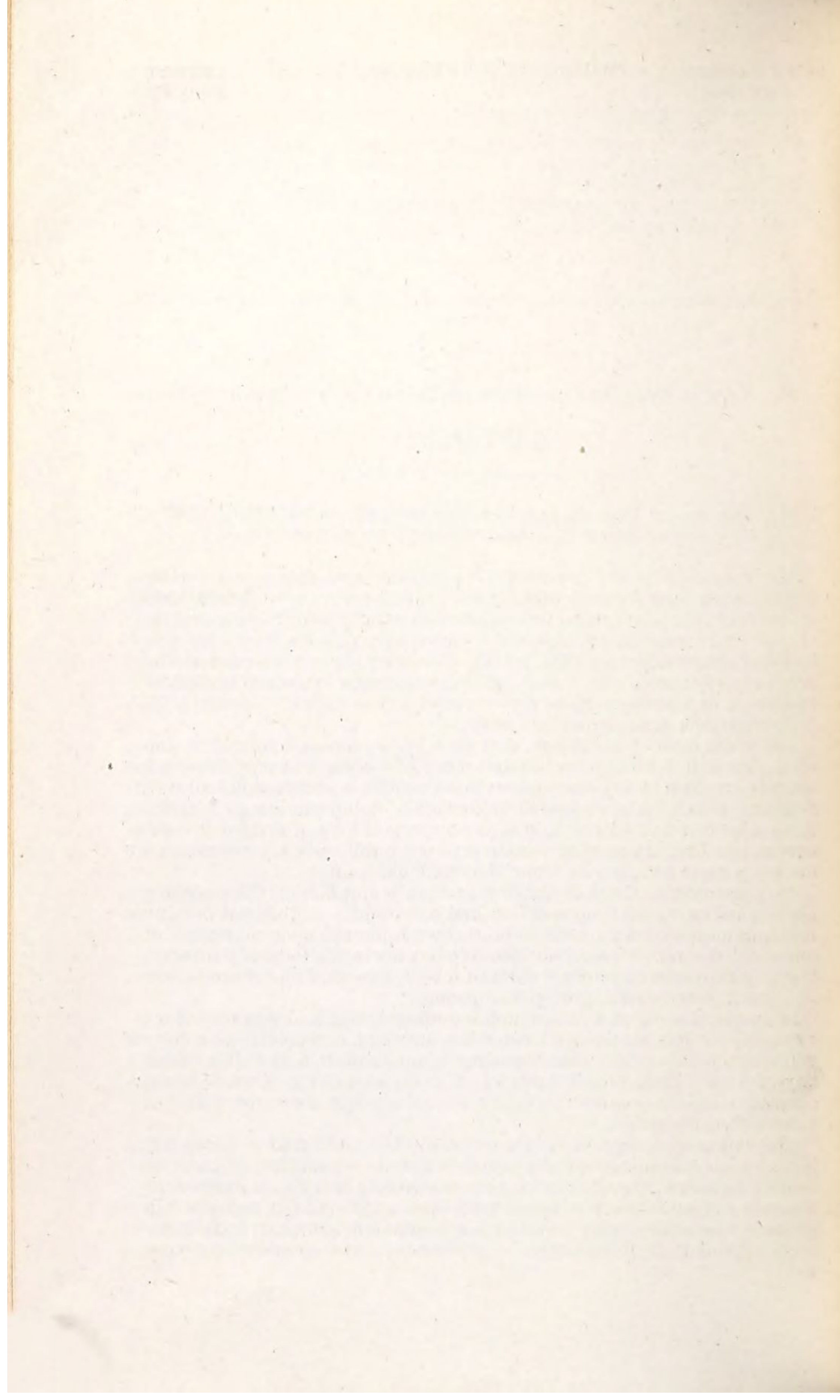
Mr. Johnston is the inventor of a process and apparatus for combining superheated steam and air with the vapors evolved from hydrocarbon oils, for the production of illuminating gas and the generation of heat to be used in the arts and for general purposes, for which a patent was granted him in 1865, which was subsequently surrendered and a reissue obtained, which was again, on account of imperfections, surrendered, and another reissue was granted on the 13th of August, 1878, in two divisions, designated A and B.

From the date of his discovery down to the present time Mr. Johnston states that he has been indefatigable in testing and perfecting his invention; that he has been entirely successful in accomplishing all that he claims; that he has expended thousands of dollars in money without having received any return, and that now, when he is prepared to demonstrate the advantages and economy to the public of his invention, he finds his patent within four months of its legal limit.

It is apparent to the committee that this is not one of the ordinary class of patents which Congress is asked to extend. It does not involve the manufacture of an article to be thrown upon the open market, and upon which the purchaser is obliged to pay a tax in the form of a royalty, but it is designed to produce light and heat for general and common use at a greatly decreased cost to the consumer.

It appears, also, that in his unaided efforts to test and perfect his invention Mr. Johnston has exhausted his means, has received no return whatever, has brought embarrassment upon himself, and this without any lack of diligence on his part, but in the encounter of such discouragements as are common to men who have made discoveries that are valuable to the public.

The committee, therefore, in view of the fact that if time is given the inventor may demonstrate the practicability of economizing the cost of essential elements, and that he may reasonably ask for an extension of his patent to enable him to recover his losses, and to enjoy the credit due to those whose efforts have resulted in a common benefit, earnestly favor early action on the bill reported as a substitute, and recommend its passage.



JEARUM ATKINS.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. VANCE, from the Committee on Patents, submitted the following

R E P O R T :

[To accompany bill H. R. 6752.]

The Committee on Patents, to whom was referred the petition of Jearum Atkins, asking to be remunerated for his invention of the first self-raker for harvesting machines, submit the following report :

That the claim and the grounds on which it is based may be more fully understood, we quote the petition entire, as follows :

Your petitioner, Jearum Atkins, of Washington, D. C., respectfully represents :

That he believes himself to have been the inventor of the first successful automatic rake for harvesters that has ever been known, for which he obtained a patent, dated December 21, 1852, and that this invention embodied the first application to said machines of certain principles which are indispensable to their practical operation, and that it was therefore in these respects the legitimate progenitor of the whole race of machines, which, though differing in form and many of their features, derive their vital powers from the creation of his own inventive faculties, and are now rendering the most important and necessary aid to one of the chief industries of the commonwealth. He also states that from protracted *and utterly prostrating illness*, and from other causes equally beyond his control, he has been prevented from deriving any but the most meager advantage from his said invention, all of which are more fully shown by the papers herewith filed. (See Exhibits A, B, C, and D, annexed hereto.)

He further states that an application for an extension of his said patent, based upon the above facts, was made in due time to the Commissioner of Patents, the fee required, \$50, having been paid into the Treasury, and all the other requirements of the law fully complied with, and that the Commissioner, after a proper examination of his case, decided favorably upon said application, and ordered that the extended patent should be issued. (See Exhibit *a*, hereto annexed.) Subsequently, however, owing to an assignment by your petitioner of a certain interest in his original patent, *but which conveyed no interest in an extension thereof, though, on the contrary, was strictly limited to the original term of fourteen years* (see a copy of said assignment on the files of this case), the Commissioner, by a mistake which he soon after discovered and acknowledged, but when it was too late to retrace his steps, *he having no power to extend the patent after the expiration of its original term of fourteen years, reversed his decision, and the extension of your petitioner's patent was finally rejected.* (See Exhibits N and P, hereto annexed.)

Your petitioner further states that on the 30th of January, 1868, he caused a bill to be introduced in Congress to authorize the Commissioner of Patents to entertain and exercise jurisdiction over a second application for an extension of his patent, in the same manner and with the same effect as if the original term of said patent had not expired, which bill finally became a law March 3, 1871. (See Exhibit J, annexed.) And on the 1st of April, 1871, the Commissioner, in pursuance of said law, did extend your petitioner's patent for 7 years from the date of said extension. (See extended patent on file.)

Almost 19 years had now passed since the first introduction of this invention into use. Nearly 5 years of this time, from the expiration of the original patent, in 1866,

until it was extended in 1871, were spent in the most laborious and exhaustive efforts on the part of your petitioner, in endeavors to procure the passage of a law to authorize such extension, which, when it was finally obtained, owing to the lapse of time, was found to be utterly worthless.

The reason why this patent could not be made available upon being extended after the invention had for 5 years been public property will be at once apparent. The manufacture of these machines had now increased to the most gigantic proportions, millions of dollars being invested in their production, and tens of thousands of machines being annually made and sold throughout the entire country. (See Exhibits E, F, and G, annexed hereto.)

Out of the vast proceeds of this business it was proposed by the manufacturers to expend so much as might be required in defiance of the rights of him who laid the foundation of their fortunes.

Within this time large numbers of patents had been taken out for automatic harvester-rakes. Each one of these was claimed by its inventor to be either an improvement upon your petitioner's invention or a radical departure from his original plan. The evidence, however, shows that they were only modifications in form, although embodying the essential principles covered by your petitioner's patent. (See again Exhibits A, B, C, and D, annexed hereto.)

Your petitioner had struck out into a new field of discovery in the art of harvesting by horse power. He had shown the general plan on which automatic rades could be successfully worked by placing all the contrivances by which they might be supported, guided, and controlled on the inner side of the platform, where they could be entirely free from becoming entangled by the cut or non-cut grain.

He constructed a successfully operating machine in this manner, and he was the first one that ever did so. Without this arrangement no automatic rake could be successful, and for this he obtained a patent.

But other inventors have seized upon the same idea, and with various modifications of form have applied it to their own purpose. There are many shapes in which this principle can be embodied and made practical. These, it is claimed, should all rightfully be subordinate to the first and master invention of your petitioner. But they all differ from each other, and it would be contended that the determination of a suit in relation to one would not be conclusive in regard to any of the others. It was thus rendered impossible to derive any income from this patent, except by the prosecution of a multiplicity of expensive and vexatious suits, the cost of which could only be borne by a millionaire, and which no one could be found who was willing to encounter.

It needs no further explanation to show that, for a man who, like your petitioner, had been worn down and impoverished by twenty-four years sickness (Exhibit I) and who had received comparatively nothing for the use of his invention, to cope with such interests and influences as these in the courts, would be but the sheerest impossibility.

Thus was the act of Congress for your petitioner's relief rendered of no avail, and thus was he, by the failure of the agent of the government (the Commissioner of Patents) to extend his patent at the proper time, *which would then have yielded him an income*, not only caused an untold amount of labor, expenditure, and vexation, but deprived of all advantage from that which had cost him most dear, and has been the source of almost incalculable benefit to the country.

THE EXTENSION LEGALLY DUE.

To prove that an extension of this patent was justly and legally due when first applied for, and that it was clearly one of the cases in which it was the express object of the law to grant an extension, we have, first, a large and very satisfactory amount of documentary evidence accompanying the application now on the files of this case. Also the fact, that the Commissioner, after a careful examination of the case, so decided. Again, by his acknowledgment that the refusal of the extension was the result of a mistake, *his former decision was confirmed* (see again Exhibits N and P, annexed hereto), and this decision was again, and yet again, confirmed by the passage of the law of Congress authorizing the extension and the final issuing of the extended patent in pursuance of such law, upon a second examination, by a succeeding Commissioner.

And for what did your petitioner pray, when he prayed for the extension of his patent, but for *his rights*; that he might be permitted to enjoy for a little time, *under protection of law, that which was his own*, the creation of his own brains, and his own hands; which by the Constitution, and by the laws of all civilized nations, is recognized as property, *as he would enjoy for all time*, and without any special grant, any other species of property. But even this little was denied him; and this remnant of what he had bestowed upon his country, in his efforts to secure which he had wasted the best energies of his life, and to which he clung as his hope of support in his declining years, was engulfed in a maelstrom, and soon passed forever beyond his grasp.

Your petitioner finally alleges that the wrong which he has sustained at the hands

of the government was not redressed, nor his grievance in any manner abated; neither was the law fulfilled, in letter or spirit, by going through the form of extending his patent five years after the time prescribed by such law for this step to be taken, and long after all that could have been rendered available thereby had ceased to exist.

He further alleges that the promise of protection of his property held out by the government, under which he labored and studied long and weary years, and expended his last shilling in producing this invention, and introducing it into use, and under which he "conveyed the same to the commonwealth forever," has never been fulfilled.

Therefore, upon the broad ground that "the laborer is worthy of his hire," and that for the labor and anxiety of a large portion of his life he has without fault or neglect on his part failed of realizing any adequate remuneration, and believing that the sovereign people who have reaped the benefit of his toil desire to be just, he now most respectfully asks their Representatives in Congress that an appropriation of a reasonable sum be made to him as a remuneration for his services.

JEARUM ATKINS.

The facts stated by the memorialist are well sustained by the accompanying affidavits, which are mostly from men who have occupied high positions under the government; and others of equally good standing.

This was an invention of great ingenuity. It was entirely new, embodying principles of action never before combined in any known mechanism. It did the work of tens of thousands of men in the harvest-field, and thus rendered it possible for this nation to produce tens of millions of bushels of grain that could not otherwise have been produced, and has therefore conferred upon the country almost untold benefits.

In 1842, being then twenty-six years old, petitioner received injuries by a fall from his wagon, from which he was confined entirely to his bed twenty-four years, or until he was fifty years old, being unable to walk or even sit up more than a few minutes at once during all this time. He had been so confined ten years when he obtained his patent, and was not able to walk during its entire lifetime, which rendered it impossible to manage his business successfully.

Petitioner presents in his memorial to Congress, as precedents for the grant of money asked for, the following cases, in which similar grants have been made, both by our own and foreign governments, to inventors of improvements of conspicuous public benefit, who had not been otherwise adequately rewarded.

Robert Fulton, for improvements in steamboats, \$76,300.

Professor Morse, for invention of the telegraph, \$38,000. Morse also received gratuities from several foreign governments, amounting in all to over \$400,000.

Professor Page, for invention of electrical engine, \$20,000.

Willmoth, for application of hydrostatic press to monitors, \$50,000.

Dr. Locke, for discovery of astronomical clock, \$10,000.

Also, several English cases of the same general character, including that of Cartwright, inventor of the power loom, "*who was rewarded by Parliament for what he had done, because he had not been remunerated in the working of his patent.*" (Mr. Carpnell, of England, authority.)

We might quote from such works as Political Economy by John Stewart Mill, and Hindemarch on Patents, to show that these eminent authors favored such public grants in particular deserving cases, but is unnecessary.

It appears from an affidavit by petitioner's attorney, Hon. I. N. Arnold (ex-member of Congress), that he only received about \$7,000, in all, on account of his invention, which, deducting expenses, did not leave a clear profit of more than about \$3,500 or \$4,000.

Petitioner is now at the advanced age of sixty-six years, and is at

present only able to walk about a very little, and, owing to the facts stated, is in very moderate circumstances.

In view of the facts presented the committee deem it but just that the comparatively small sum named in the accompanying bill be awarded to petitioner on account of his public services, and accordingly ask leave to report back the bill, with the recommendation that it pass.

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SALARIES IN THE PATENT OFFICE.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. YOUNG, from the Committee on Patents, submitted the following

REPORT:

[To accompany bill H. R. 6753.]

The Committee on Patents, to whom was referred the bill (H. R. 6753) amendatory of sections 440 and 447 of the Revised Statutes of the United States, having had the same under consideration, beg leave to report the same with amendments, and to recommend its passage.

The work of the Patent Office is rapidly and largely increasing. During the first five months of the year 1881 12,937 applications for patents were received, and for the same period in the year 1882 15,244.

The increase in the receipts of the office has been as marked, and represents a corresponding increase in the work of examination of patents and of clerical labor. The receipts during the first five months of 1881 were \$364,182.10, and for the same period in the year 1882 have been \$428,805.65. At the present ratio of increase the receipts for the first half of the present calendar year will exceed \$500,000.

The work of examination of applications for patents has correspondingly increased.

Every patent, every new printed publication, extends and enlarges the field of research. The extent of this work of examination may be in a measure appreciated when it is considered that the total number of patents of all countries is now very large, viz: United States, 260,000; France, 160,000; England, exclusive of Canada and all other British colonies, 160,000; German Empire, Spain, Italy, Sweden, &c., about 20,000 each.

The annual issue in the United States for the year 1881 was 16,584; in France, England, and the German Empire, about 5,000 each; so that the sum of the annual increase of patents by the nations issuing the largest number is not less than 30,000.

It must be remembered that to these sources of research must be added the vast and growing number of trade-mark and technical journals and the various publications in the arts and sciences. Each year the range of search to be covered in examining each application becomes more extended, and consequently more onerous.

In the early history of this country inventions were comparatively crude, representing the mechanical and technical skill and knowledge

of a new country. Gradually the artisans and manufacturers have advanced, until now their inventions present the most intricate and refined results in the useful and practical application of the arts and sciences.

On account of, and as a result of the increase in the number of applications for patents, as well as the complicated character of inventions now made, the examining force of the Patent Office is unable to perform the current work of examinations in due time to meet the just demands of inventors. For these reasons the work of the office of this character is largely in arrears. Daily reports of this kind of work are made to the Commissioner, from which it appears that there are to-day on hand waiting for examination not less than 3,600 applications, of which number 2,500 have not received action by the office.

This condition of affairs in the Patent Office is due to two causes: First, an insufficient number of persons in the examining force; and second, the frequent changes in its *personnel* by resignation. The examining force includes the Commissioner, Assistant Commissioner, three examiners in-chief, an examiner of interferences, principal examiners, and assistant examiners. Excepting the long term of the first Commissioner of Patents, of over nine years, the average tenure of office of all other Commissioners has been only one year and eight months. During the last eight years there have been five Commissioners, whose average tenure of office has been only one year and six months. In the same period of time, from the examiners-in-chief—a board composed of three members—there have been three resignations; from the twenty-five (formerly twenty) principal examiners there has been an annual average of three resignations; and during the years 1880 and 1881 20 per cent. of the entire examining corps was changed in consequence of resignations. Nearly all of these resignations have taken place in order that the persons might engage in more lucrative employment.

In the opinion of this committee, to properly discharge the duties imposed by law on the examining corps of the Patent Office requires men of special learning and of skilled and trained ability. It is to be observed that the Patent Office, by rigid competitive examinations for entrance to this corps, and promotions therein, offers an incentive to such persons to thoroughly and intelligently prepare themselves for their duties; hence their services soon become of great value to the best interests of the office. Such adequate pecuniary remuneration should be provided as will secure to the government the services of such men, and induce them to remain in the office. The salaries now provided are much less than are frequently tendered by corporations, firms, and individuals, and the active and energetic examiner leaves the office to engage in better-paid labor.

To remedy this condition of things your committee have provided in the bill for twenty-five assistant principal examiners, being one assistant to the principal examiner of each of the twenty-five divisions of the office, and for an increase of the salaries of all its officers who are responsible for the examination of applications and issuing of patents.

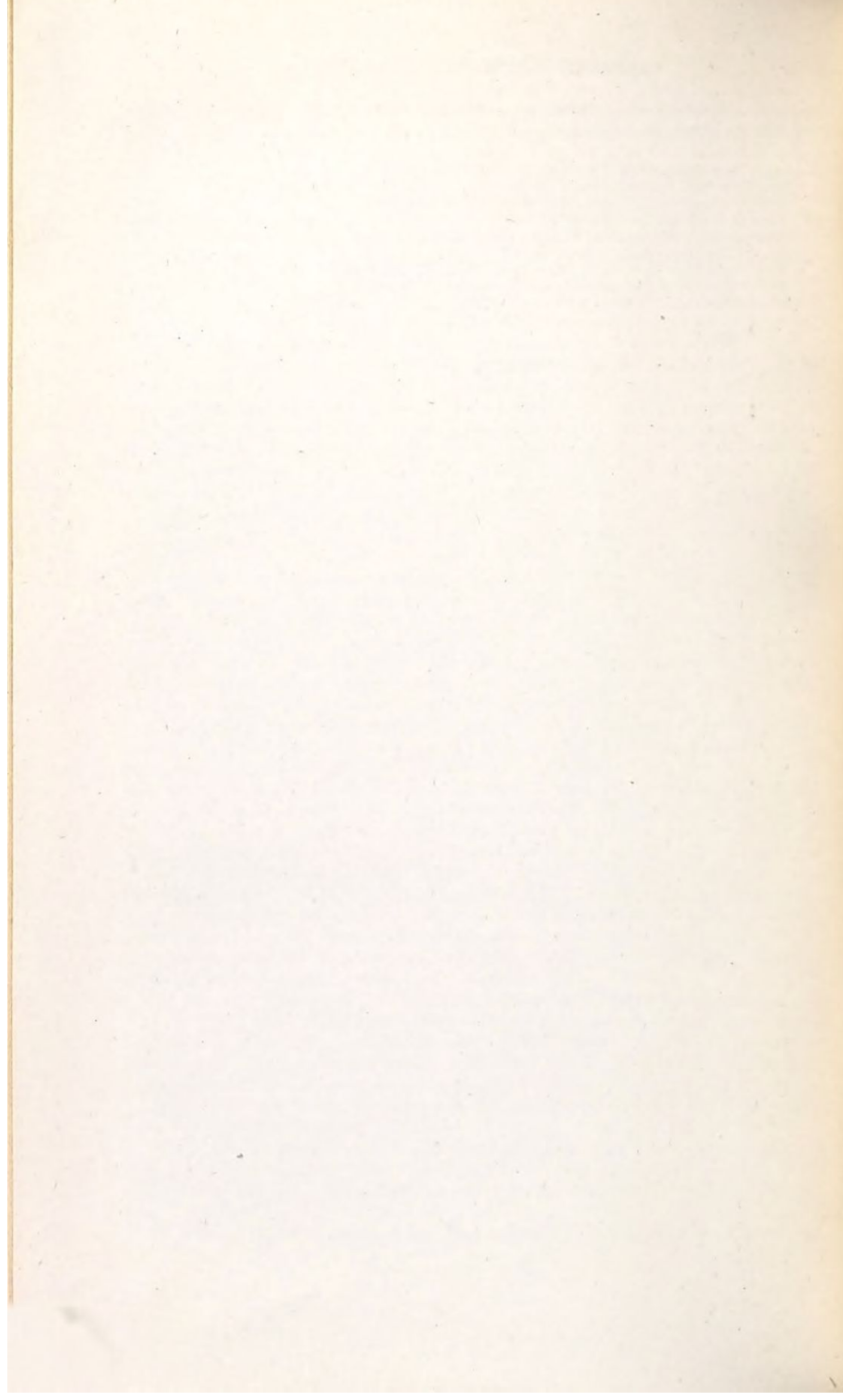
It is believed that this increase will insure to the corps a high order of ability and reasonable stability.

An increase of salary has also been provided for those of the higher officers of the clerical force, whose responsibilities and duties have been much augmented by the increase of the general work imposed on the Patent Office.

By the provisions of this bill an increase in the salaries of officers and

employés in the Patent Office beyond what is provided in the appropriation bill now pending, is made as follows:

	Increase.
477. One Commissioner of Patents, from \$4,500 to \$6,000.....	\$1, 500
One Assistant Commissioner of Patents, from \$3,000 to \$4,500.....	1, 500
Three examiners-in-chief, each from \$3,000 to \$3,600.....	1, 800
440. One chief clerk, from \$2,250 to \$2,500.....	250
One financial clerk, from \$2,000 to \$2,500	500
One application clerk added, \$2,000	2, 000
One messenger and purchasing clerk, from \$1,000 to \$1, 200	200
One examiner of interferences, from \$2,500 to \$2,750.....	250
25 examiners, each from \$2, 400 to \$2,750	8, 750
Total.....	<u>16, 750</u>



WILLIAM MUMFORD.

JULY 15, 1882.—Laid on the table and ordered to be printed.

Mr. RAY, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1984.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1984) granting a pension to William Mumford, beg leave to return the same, with the recommendation that it lie on the table, as it appears that the pension asked for has been granted under the general pension laws since the introduction of the bill.

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ROBERT J. GILLESPIE.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PARKER, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 318.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 318) granting a pension to Robert J. Gillespie, have considered the same, and report as follows :

The applicant, Robert J. Gillespie, enlisted February 12, 1864; mustered March 1, in Company F, Ninety-eighth Regiment Ohio Volunteers; discharged July 31, 1865. Declaration filed November 27, 1877; rejected July 2, 1880, on the ground of inability to furnish evidence of the alleged injury or of medical treatment for same while in service, or at date of discharge.

The reports from the Adjutant-General's office show that the said Gillespie was mustered as a recruit in March, 1864, and so reported to June 30, 1864; July and August absent; sick in hospital from August 19, 1864, and so reported, to February 28, 1865; March and April transferred to Veteran Reserve Corps, muster rolls of Company C, Sixth Regiment Veteran Reserve Corps, to which transferred December, 1864, to April 30, 1865; May and June, 1865, absent; clerk at post headquarters, Cincinnati, Ohio, May 22, 1865; was mustered out on individual muster roll July 31, 1865, at Detroit, Mich., a private, per special order No. 375, from Secretary of War, dated War Department, July 17, 1865.

The reports from the Surgeon-General's office show that Robert J. Gillespie, private Company F, Ninety-eighth Regiment Ohio Volunteers, entered field hospital, Second Division, near Atlanta, Ga., August 18, 1864, with dysentery; transferred the 24th of August, 1864; entered general field hospital, Department of Cumberland, Viuing Station, Georgia, August 25, 1864, with dyspepsia, and was transferred the 26th August, 1864; entered general field hospital, Army of the Cumberland, Chattanooga, Tenn., August 27, 1864, with inflammation of lungs, and was transferred September 25, 1864; entered general hospital No. 3, Lookout Mountain, near Chattanooga, Tenn., September 25, 1864, with hypertrophy of the heart, and transferred October 10, 1864; entered No. 14 general hospital, Nashville, Tenn., October 12, 1864, with functional disease of the heart, and was transferred to invalid corps December 15, 1864, by reason of functional disease of the heart. It is also stated that the records of the regiment are not on file in that office.

The applicant states that he was on detached service at the time of

receiving the injury to spine, and cannot, therefore, furnish the testimony of the surgeon showing his condition at discharge. Has not been treated since his discharge for the injury complained of, as he always considered it incurable.

Capt. J. C. Patterson, under whom Private Gillespie served, testifies, from records in his possession, that claimant was injured in his back by helping to carry a large pine log to put on top of the embankments for a head log; by some accident he stumbled over a small stump and fell, injuring his back, and was sent to hospital August 18, 1864. The accident occurred Sunday, August 7.

William B. Ankison testifies as having known claimant for twenty years; lived in the same neighborhood with him prior to the war; saw him frequently; never heard that he was troubled with disease of the spine, and is satisfied he would have known it if such had been the fact.

William C. Boggs testifies that he has known the claimant thirteen years; that at times during that period he has been incapacitated for hard labor because of a lame back. Archibald Scott, J. M. Bill, and H. H. Scott make substantially the same statement.

The postmaster at Vinton, Iowa, reports the above affidavits worthy of belief.

The committee, after due consideration of the evidence in this case, are of opinion that the injury for which the claimant asks a pension, was received as alleged and in the line of duty, therefore report the bill back to the House with the recommendation that it do pass.

W. A. CHAPMAN.

JULY 15, 1882.—Laid on the table and ordered to be printed.

Mr. OATES, from the Committee on Claims, submitted the following

REPORT:

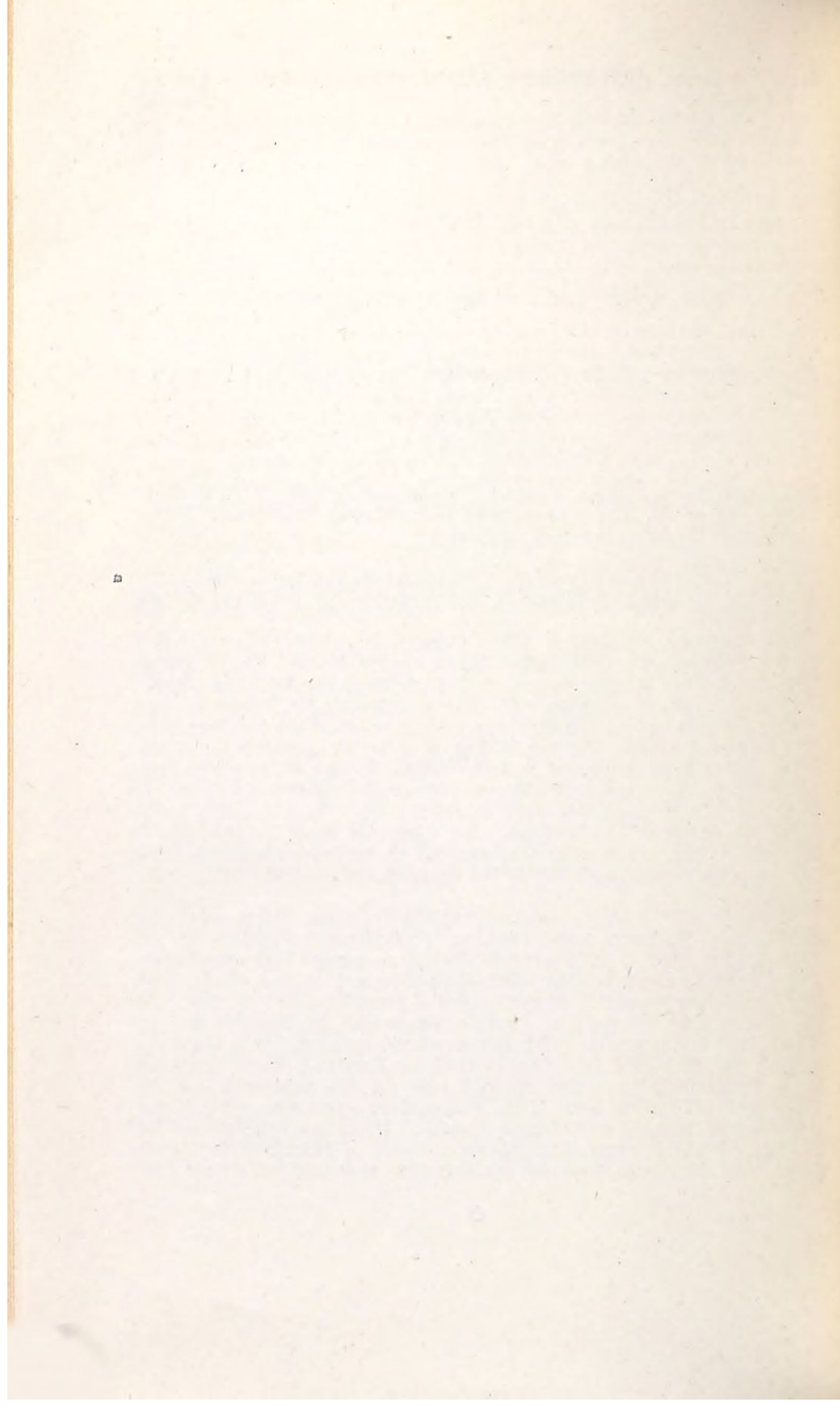
[To accompany bill H. R. 1610.]

The Committee on Claims, to whom was referred the bill (H. R. 1610) for the relief of W. A. Chapman, have had the same under consideration, and make the following report thereon:

The bill proposes to pay to W. A. Chapman \$1,714 for the destruction by fire of his grain distillery of spirits under the following circumstances, viz:

His distillery, situated in Giles County, Tennessee, was destroyed by fire February 21, 1878. One Breen was the United States gauger and storekeeper in charge, and on the night of the burning, about 8 o'clock p. m., he, in company with others, including Mr. Chapman, were sitting by a fire under the distillery shelter, when some one suggested that he heard a noise like the falling of water or spirits in the cistern room, and that he suspected that the cistern or some of the pipes might be leaking. Thereupon Mr. Breen voluntarily lighted a candle and went into the cistern-room with it, accompanied by one Miles, to discover the cause of the leakage. Mr. Chapman made no objection to this proceeding. Soon after they entered an explosion occurred, filling the room with flame, and Mr. Breen escaped, but so badly burned that he died.

These are all the facts established by the evidence. Breen was in the discharge of his duties under the law. (See Revised Statutes, sections 3271-3273.) Section 3274 gave to Breen, as gauger and storekeeper, and Chapman as proprietor, joint possession and control of the distillery storehouse premises. Breen's right of possession and control under the law was for the purpose of securing to the government the tax which that law imposed. Did Breen, as the agent of the government, exceed his authority and duty? Had he survived, could Chapman have maintained an action against him for the destruction of the property? We think not. If the government agent was guilty of negligence, the claimant contributed thereto. Upon no principle of law or equity is the government liable for the loss of Mr. Chapman's property. The committee therefore recommend that said bill do not pass.



ALBERT GRANT.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. RAY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 615.]

The Committee on Claims, to whom was referred the bill (H. R. 615) for the relief of Albert Grant, submit the following report:

Your committee have fully and carefully examined into the facts of this case, and the evidence taken on behalf of the government as well as that on behalf of the memorialist in the original cause referred to in said bill, and find that these have already been correctly set forth in reports upon the case presented to former Congresses, and which they here substantially adopt, particularly House report 897, of the Forty-sixth Congress, second session.

At the December term, 1868, of the United States Court of Claims, the memorialist obtained a judgment for the sum of \$34,225.14 for extra work done and material furnished in the erection of a fire-proof storehouse for the government, at the Schuylkill Arsenal, in Philadelphia, in the year 1867. The memorialist alleges that the court, in entering its said judgment, made a mistake in the amount awarded him, by taking the amount, through inadvertence, from a report made by the government architect, Mr. Fraser, to the War Department, shortly after the work was done, and which was among the papers in the cause, instead of taking the sum, as the court intended, from the evidence of the same gentleman when sworn as a witness in the cause, and that this would have made the judgment exactly \$46,738.86.

Upon examination of the evidence and record in said cause it unmistakably appears that there was no evidence before the court on which a judgment of the amount named by the court could have been properly rendered.

The court found as a matter of law that the memorialist was entitled to judgment against the United States to the amount of the value of the extra work done and extra material furnished.

Four witnesses, and four only, testified in the cause, as to such value, to wit, B. Oertly and John Fraser, Allan A. Grant and Jackson Grant, and their evidence, wholly uncontradicted and unquestioned, was as follows:

B. Oertly testified total value of extras, \$47,038.68.

John Fraser testified total value of extras, \$46,738.86.

Allan A. Grant testified total value of extras, \$48,814.64.

Jackson Grant testified total value of extras, \$50,373.55.

An average of all this testimony would give \$48,241.48 as the proper

amount of judgment to be rendered, *i. e.*, \$14,016.34 more than was named in the judgment.

In the absence of any explanation, this discrepancy between the testimony and the judgment of the court would seem as unaccountable as unreasonable.

It appeared, however, in the course of the trial, that the witness Fraser, being the government architect at some time previous to the bringing of the suit, had been called upon by the War Department to make an estimate of the value of these extras, and in his report thereon made to the department he had named the sum of \$34,255.14. This unsworn and *ex parte* statement was among the papers in the cause, and explained by Mr. Fraser in his testimony. *It will be observed that the figures correspond exactly with the amount of the judgment.*

On the trial of the cause Mr. Oertley testified as to the extras and their value, as follows, as appears from the copy of record filed with your committee (Exhibit A), pages 75 to 77:

Item 1. For cutting out and removing 315 cubic feet of concrete footing and replacing same by grouted work of pure cement, at \$1 per foot	\$315 00
Item 2. For difference common concrete as required by contract, and grouting of pure cement as required by the government, on 349 perches of footings, at \$7.50 per perch	2,617 50
Item 3. For changing 75 stones placed in walls for iron beams to rest upon, required by the specifications to be 8 by 12 inches, taken out and replaced by stones 8 by 24 inches, and the same taken out and again changed to 8 by 12, as also for taking down the brick walls, securing them, and rebuilding the same by order of the government officials	500 00
Item 4. For plastering of basement walls, one coat, 1,722 yards, at 20 cents per yard	344 40
Item 5. For extending projection four inches, and filling in between rafters around the entire building of brick work, being 37,080 bricks, at \$50 per thousand	1,854 00
Item 6. For 5,000 superficial yards of grouting, 2½ inches thick, spread over floor, in addition to that required for haunches, being of pure cement, at \$1.25 per yard	6,250 00
Item 7. For the difference in leveling up the haunches of the arches, for the floors to rest upon, in grout of pure cement, rather than in concrete of lime and sand, as required by contract, amounting to 311 perches, at \$10 per perch	3,110 00
Item 8. For difference between laying floor arches in line, cement and sand, as required by contract, and laying the same in pure cement mortar, 369,380 bricks, at \$6 per thousand	2,216 28
Item 9. For difference between common concrete made of lime and sand for cellar floors, and grouting of pure cement, 212 perches, at \$9 per perch	1,908 00
Item 10. For difference in roof, between that as required by contract and as actually built by order of the government officials, including a change in the iron tie-rods from single 1½ inch round rod to complicated double rods, increasing the number of trusses, drilling purlines, and supporting the same by iron rods encased in gas-pipe, making four complete sets of tie-rods running around the entire building, in making extra hips and valleys, occasioning large increase in material and labor, with other modifications and changes	13,938 48
Item 11. For scuttle to roof, none being required by plans or specifications.	75 00
Item 12. For carrying up partition walls to ridge of roof, requiring 37,092 bricks, at \$30	\$1,112 76
and fitting and cutting to roof 324 lineal feet of wall, at 50 cents per foot	162 00
	1,274 76
Item 13. For topping eight chimneys with North River flagging	96 00
Item 14. For transom windows with iron sash and glass	100 00
Item 15. For taking down 31,500 bricks and stone belt-course on west front of building, and relaying and resetting the same (all difficult work), at \$30 per thousand	945 04
Item 16. For 50 sets of bolts placed in the walls for roof trusses over courtyard, viz, two bolts and iron plate to the set for clamping brick work...	150 00

Item 17. For taking down four 9-inch beams and replacing the same by four 12-inch girders, viz, placing 12,300 pounds iron beams, at $\frac{3}{4}$ cent per pound	\$92 25
Item 18. For building addition walls between old and new building, and placing iron beams for said walls to rest upon, requiring 14,400 bricks, at \$30 per thousand.....	\$432 00
and placing of 1,820 pounds of iron beams, at $\frac{3}{4}$ cent per pound..	13 65
	445 65
Item 19. For difference between copper gutters, ridges, valleys, and downspouts, as required by the department, and the tin gutters, valleys, spouts, and ridges required by contract	8,608 25
Item 20. For 2,610 pounds additional iron beams in west stairway, not required by the original plans, at 10 cents per pound	261 00
Item 21. For cutting 27 holes for hoisting apparatus, and putting iron eyes, at \$6 each.....	162 00
Item 22. For cutting out brick work to admit new girders (see Item 17) necessary on account of delay.....	175 00
Item 23. For placing 700 iron beam-plates not required by specifications, after all the beams had been placed, at 50 cents each.....	350 00
Item 24. For change of hatchway on account of error in drawings, 2 additional beams required, and altering and changing frame work, also making good the brick work.....	150 00
Item 25. For closing four windows opening into basement of old building..	100 00
Item 26. For four sets of plank steps to basement, not required by contract	200 00
Item 27. For difference between bedding the brick pavement of the several floors in pure cement $1\frac{1}{2}$ inch thick, and bedding the same in common mortar, as required by contract, 6,667, at 87 cents per yard.....	5,800 29
Total.....	47,038 86

On the trial of the cause, Mr. Fraser, architect of War Department, testified as follows, to wit:

The amount of my estimate was \$34,225.14. I was induced to make this report low, understanding that the contractors had large amounts to pay upon the building; supposing that by making it low, it would be more likely to be allowed by the department. Since making my report I have, with Mr. Oertley, reviewed my estimates as to the extra work charged. The paper now shown me, marked Exhibit A, appended to the deposition of Mr. B. Oertly, in this case, gives the estimate as made by us. I have compared the estimate in my report with the estimate made by Mr. Oertly and myself, of items number 1 to 21, inclusive, and they are identical; I have had occasion to change the amount of my estimate on items number 1 and number 21, inclusive, by adding \$6,038.43; the total amount of my present estimate upon these items is \$40,263.57. On inspecting the building and comparing it with the specifications, plans, &c., I find other items than those before reported by myself; these additional items of extra work are set forth in the amended petition, and numbered from 23 to 27, inclusive. I have made my present estimate from actual inspection of the work, and from comparing it with the contract, plans, and specifications; the work charged for as extra was all done under me, with the exception of items one, two, three, and fifteen; it was done by my order, and with the knowledge of the government officers; government officers visited the work daily with me; I was at the building with Colonel Crilly, almost every day, from the time of my appointment.

No evidence whatever was produced to cut down the amount of the estimates as made by these witnesses. The court in pronouncing judgment, said:

In respect to the facts [those on which the present memorialist based his claim to compensation for this extra work and material] the United States Assistant Attorney-General, after a most careful examination of the whole testimony, in his printed brief very justly remarks that "it is not our purpose to discuss the evidence which it is alleged establishes the several items of the claimant's demand. The evidence adduced for that purpose may be regarded as sufficient to establish the claimant's right to recover if the government is liable to pay."

From this judgment, however, an appeal was immediately entered by the United States carrying the case at once into the Supreme Court.

The attorneys for the claimant very soon discovered the error in the amount of the judgment as entered up, but meanwhile the record had

been transferred to the appellate court. Not deeming it necessary for the protection of their client's interests, they did not join in the appeal, supposing as they might that the whole case would be fully heard by the Supreme Court, and the proper and just judgment be there rendered. On this account no effort was then made to have the record corrected.

After a delay which lost to the claimant his right of appeal, the United States abandoned or withdrew the appeal it had taken, and so the case went back to the Court of Claims, when it was too late for Grant there to obtain the correction his attorneys had anticipated obtaining in the Supreme Court.

But beside the internal evidence thus afforded from the record itself that the actual decision and intention of the court by mistake was not embodied in the entry of judgment, we have the highest extraneous evidence.

In answer to the request of the Committee on Claims of a former Congress, for information touching the merits of this case, the Assistant Attorney-General, who tried this cause on behalf of the United States, wrote as follows:

DEPARTMENT OF JUSTICE,
Washington, January 11, 1875.

SIR: Your note to the Assistant Attorney-General, in regard to the claim of A. Grant, has been handed to me, as I had charge of the defense of his suit against the government in the Court of Claims. Whether the court made a mistake in rendering judgment in Grant's case is rather a matter of inference than that of positive knowledge. When the judgment was rendered I supposed the court had made a mistake, and wondered why Grant's counsel did not move for a correction of the judgment. The figures given by the court in the judgment are not to be found in the testimony of any witness, but are taken from a report made by Mr. Fraser before the suit was brought. Mr. Fraser was a witness in the case, and in his testimony he estimates the value of the extra work done by Grant at \$46,738.86. This was the lowest estimate made by any of the witnesses.

Very respectfully,

ALEXANDER JOHNSON,
Special Assistant Attorney-General.

Hon. J. C. BURROWS,
House of Representatives.

The late Hon. Joseph Casey, chief justice of the Court of Claims at the time of the trial and judgment referred to, made the following statement in regard to the facts and the error of the court, in a letter on file with your committee, as follows:

WASHINGTON, D. C., *January 13, 1875.*

DEAR SIR: I have yours of yesterday. I have carefully re-examined your case in the Court of Claims, for compensation for building a fire-proof storehouse at the Philadelphia Arsenal for the United States. And in connection with my memoranda, kept at the time, two items of claim were made: 1st, about \$50,000 for extra work; 2d, near same amount for damages for delays, losses, and interest on account of changes, &c.

The original estimate by the government architect for the changes and extra work was something over \$34,000.

The survey and actual calculation of the cost and value of this work at the contract prices, after it was done, as made by four different architects, was an average of over \$48,000, that of the government architect being \$47,000.

The court, after trial, rejected the claim for damages, and allowed that for extra work.

The mistake in the amount of the judgment, which should have been for \$47,000, arose, I am sure, from adopting the architect's prior estimate instead of his subsequent actual calculations of the cost of the work.

My attention was not called to this error until after the judgment had been certified and paid.

I am quite sure that you should have had \$14,000 in addition to the judgment rendered in the case for compensation alone, without any interest or damage.

I am, very respectfully, yours,

JOS. CASEY.

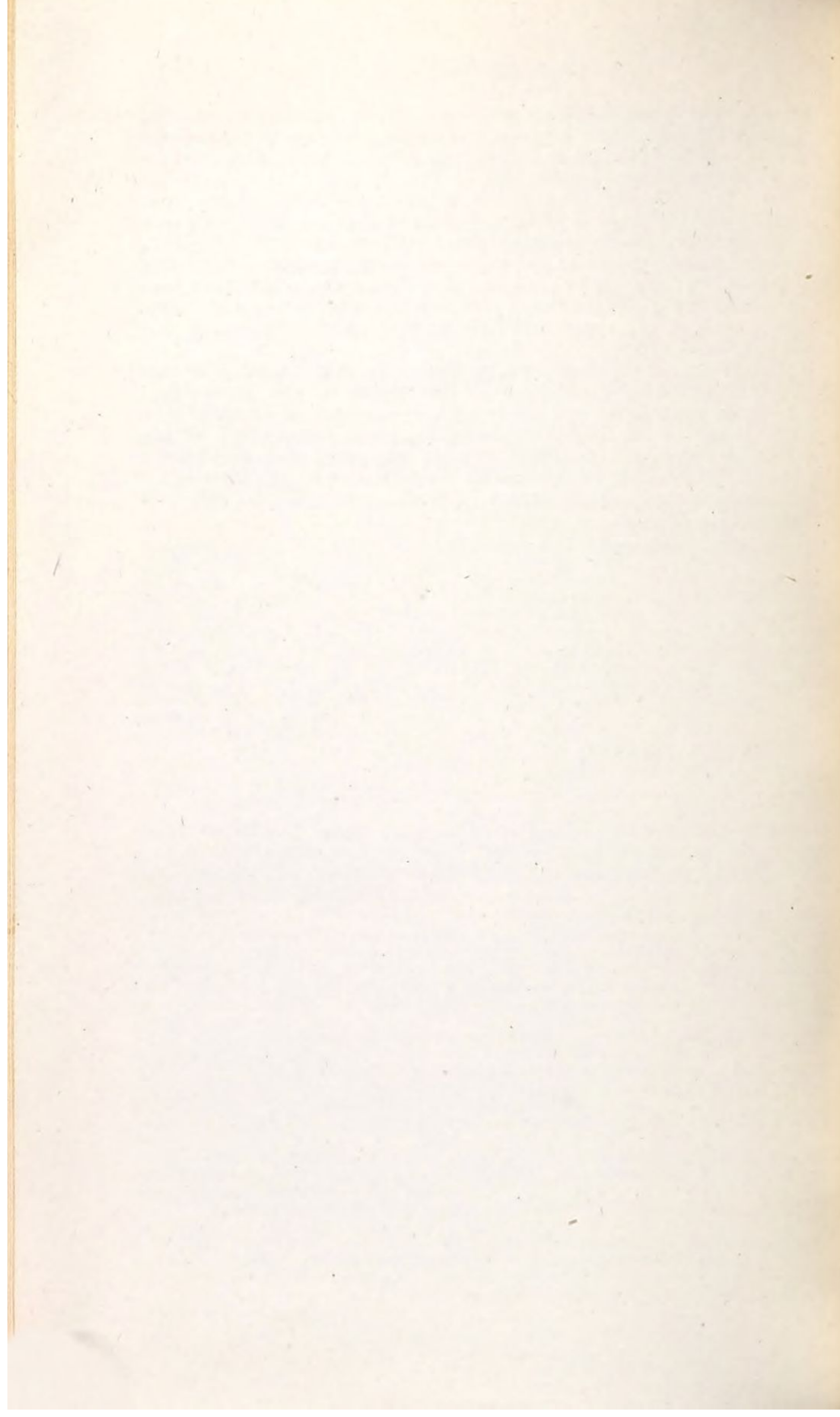
Capt. A. GRANT.

These are the material facts of the case. To our minds it is clear that the memorialist has rendered service and expended money to the amount of several thousands of dollars legitimately for the benefit of the government, which the government has had the benefit of, and for which it has not paid. It is clear also that the proper court has duly passed upon the question of his right to recover and decided in his favor, but that through the inadvertent error of the court, without any fault of his own, Grant has failed to obtain judgment for the proper amount. We think he is entitled to the relief he asks, and that the government cannot honorably refuse to allow him to have standing in the court where the error occurred, so that the court may now do that which it intended and would have done before.

It perhaps ought to be remarked, in conclusion, that a similar bill was favorably reported by committees of this House in the Forty-third, Forty-fourth, Forty-fifth, and Forty-sixth Congresses, but failed to be reached on call of the Calendar in each instance, except that of the Forty-fourth Congress. In that Congress it was acted upon and passed the House, but failed to be reached for consideration by the Senate.

The committee accordingly report back the accompanying bill, and recommend its passage.

H. Rep. 1668——2



MARY J. FLOOD.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. RAY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5865.]

The Committee on Claims, to whom was referred the bill (H. R. 5865) for the relief of Mary J. Flood, widow of George W. Flood, submit the following report:

This claim has been favorably reported several times by the Committee on Claims in both houses of Congress, and has twice at least passed the Senate.

The last Senate report, made by Senator Cameron, of Wisconsin, during the present session, is as follows:

The Committee on Claims, having had under consideration the bill (H. R. 4030) for the relief of Mrs. M. J. Flood, widow of George W. Flood, respectfully report:

It appears from the evidence submitted to your committee that G. W. Flood was a laborer in the office of Topographical Engineers at Washington, from December 1, A. D. 1854, to September 16, 1856, a period of twenty-one months and fifteen days; that during the said time, in addition to his services as a laborer, he performed the duties of a clerk of class 1; that he was only paid the regular wages of a laborer. The claimant prays to be allowed the difference in pay between what her husband actually received as a laborer for that period and what he would have received as a clerk of class 1.

By the act of March 3, 1853 (10 Stat. L., p. 210), five clerks were allowed to the office of the Colonel of Topographical Engineers, under a discretionary power vested in the Secretary of War; by the same act (p. 211) one of the clerks was removed from the Topographical Bureau to the office of Colonel of Engineers, and from the latter office a clerk was transferred to the Office of the Secretary of War. Colonel Abert, Chief of the Topographical Bureau, finding that Mr. Flood was capable of performing clerk duty, and that his work as a laborer was done chiefly before and after office hours, employed him to perform the work of the clerk who had been taken away from the office, such work consisting in copying letters and keeping a record.

The original memorial filed in this case was referred to the House Committee on Claims January 7, 1857. It has the following indorsement:

“Considering the memorial correct, it is respectfully recommended to favorable consideration.

“J. J. ABERT,
“Colonel Corps Topographical Engineers.

“DECEMBER 11, 1856.”

The merits of the claim are very cordially approved by the officers of the Bureau of Topographical Engineers.

Maj. J. D. Graham, in a letter to the Hon. R. M. C. Hunter, chairman of Senate Committee on Finance, under date of December 4, 1856, says:

“Mr. George W. Flood has been actually performing the duty of clerk in the Topographical Bureau at Washington for three years and a half or thereabouts, although he has been receiving only the pay of messenger, there being no appropriation out of

which he could be paid for his actual services. His services are fully attested by his official superior. * * *

"Mr. Flood is a meritorious man, well known to me, as he served several years in the Northeastern Boundary Office under my command, as a soldier in the Army, from which situation he obtained an honorable discharge after five years' service."

Col. J. J. Abert, Chief of the Bureau of Topographical Engineers, in a letter to the Secretary of War, under date of January 26, 1857, says:

"1st. The services of Mr. Flood, as a laborer, were usually performed before and after office hours.

"2d. Finding him capable of doing clerk duty, he was employed on such duties during all the time for which he has made claim, in keeping a record of letters received and in the copying of documents.

"3d. The causes which made necessary this employment are the quantity of copying in relation to office annual report and in order to meet calls of Congress, and because, under the act of March 3, 1853, one clerk of class 3 for this office was assigned to the office of engineers (of fortifications). The additional clerk required in this office and provided for by act of August 18, 1856, was appointed on the 16th of September following, up to which time Mr. Flood claims compensation."

The claim, however, appears not to have met with the sanction of the War Department. On the contrary, in transmitting the following letter to the Hon. D. L. Yulee, then of the Senate Committee on Claims, Mr. Davis, then Secretary of War, says, under date of January 27, 1857:

"I will remark that the necessity for the services performed was not known to the department, nor is it apparent now, and the claim does not therefore meet its approbation."

On this state of the case a bill for the relief of Mr. Flood was reported by the Senate Committee on Claims (Senate bill No. 266, first session Thirty-fifth Congress). This bill passed the Senate May 21, 1858. (*Globe*, vol. 36, part 3, first session Thirty-fifth Congress, p. 2281.) It was reported to the House May 22, 1858. (*Ibid.*, p. 2309.) No action appears to have been had thereon in the House.

The case was again before the Senate committee of the Thirty-sixth Congress. In a letter to the Hon. A. Iverson, chairman of that committee, under date of April 27, 1860, Colonel Abert again gives the history of Flood's services. In conclusion, he says:

"Mr. Flood voluntarily offered to do anything that might be required of him, but there was no understanding with him, in writing or verbal, that he was to receive the compensation of a clerk during the time he was employed. His services as such were useful to the public service, and it is respectfully recommended that his claim be allowed."

On May 29, 1860, the Senate Committee on Claims again reported a bill for the relief of Mr. Flood. (*Globe*, vol. 41, part 3, first session Thirty-sixth Congress, p. 2421; S. No. 473, same session.) No final action seems to have been had upon this bill.

It thus appears that the merits of this claim have twice received the sanction of the Senate, notwithstanding the disapproval of the Secretary of War.

In the opinion of your committee the claim for relief is supported by strong equities. By the act of August 18, 1856, the Secretary of War was authorized to employ an additional clerk in the office of the Topographical Bureau. (*Stat. at L.*, vol. 11, p. 118.) The employment of Mr. Flood to discharge the duties of a clerk only brought the force up to what it was before and after the time of his service. The service rendered by him was in addition to his duties as a laborer, and in the opinion of your committee it is fit and appropriate that his widow, who is now alleged to be in needy and destitute circumstances, should receive some compensation therefor.

By section 3 of the act of March 3, 1853, the salary of clerks of class 1 is fixed at the sum of \$900 per annum. (*Stat. L.*, vol. 10, p. 209.) This act appears to be the law regulating the pay of clerks of this class during the period for which the difference in pay is prayed in this case.

The amount of pay actually received by Flood for his services as a laborer during the twenty-one months and fifteen days was \$1,037.

On the basis of \$900 per annum (the salary of a clerk of class 1) the difference in pay is the sum of \$575.50. Your committee therefore recommend that claimant be allowed this amount, and report back said bill with the recommendation that it be amended in accordance herewith and passed.

Your committee are satisfied that the said Senate report is fully sustained by the evidence, and report back said bill with the recommendation that the same do pass.

ROBERT RICHARDSON.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUCHANAN, from the Committee on Claims, submitted the following

REPORT:

The Committee on Claims, to whom was referred the House resolution for the relief of Robert Richardson, submit the following report:

This resolution authorizes and directs the Clerk of the House of Representatives to pay to Robert Richardson, for services as messenger in the Clerk's office, the difference between the pay of a laborer, received by him, and that of a messenger, from the 23d day of January, 1876, to the 13th day of October, 1877, \$826.29. Hon. Green Adams, late chief clerk of the House of Representatives, certifies in writing that Robert Richardson served as laborer and messenger in the office of the Clerk of the House of Representatives in the Forty-fourth Congress, his services beginning on the 26th day of January, 1876, until some time in the fall of 1877 he was transferred to the bath-rooms of the House, when his services as laborer and messenger ceased.

The pay-rolls of the House show that during the time of the said service said Richardson drew the pay of a laborer only. From the evidence of Robert Richardson, which the committee believe to be true, it appears that he was transferred to the bath-room on the 13th of October, 1877. The committee believe it will be an act of justice to allow the amount claimed to Robert Richardson, and recommend that the resolution be amended by inserting in the fifth line of the resolution, after the word "office," "out of the contingent fund of the House of Representatives," and when so amended, that the resolution do pass.

FORTY-SEVENTH CONGRESS, FIRST SESSION.

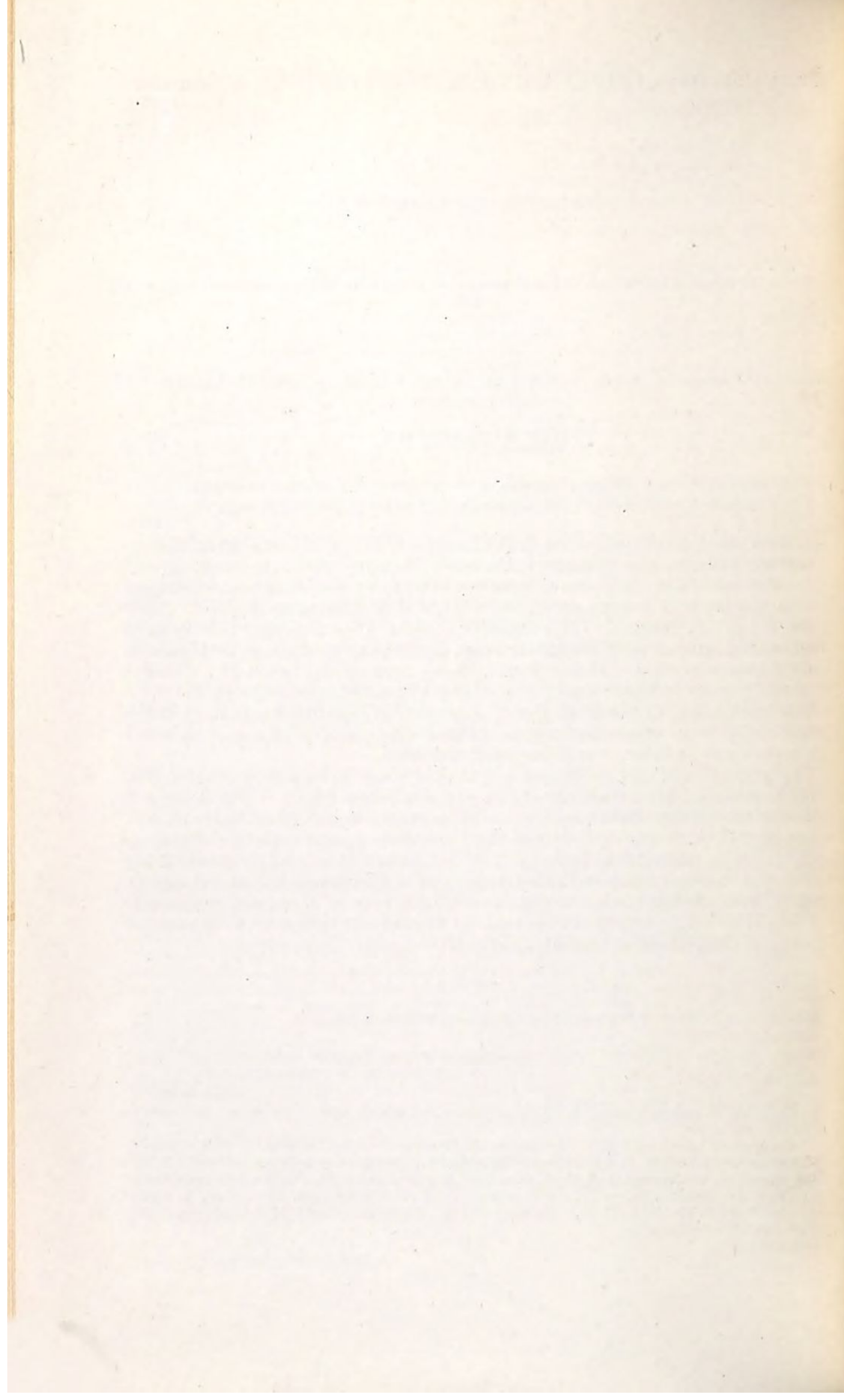
CONGRESS OF THE UNITED STATES,
IN THE HOUSE OF REPRESENTATIVES,
June 7, 1882.

Mr. Aldrich submitted the following resolution, which was referred to the Committee on Accounts:

Resolved, That the Clerk of the House of Representatives be, and he is hereby, authorized and directed, to pay Robert Richardson for services as messenger in the Clerk's office, *out of the contingent fund of the House of Representatives*, the difference between the pay of a laborer, received by him, and that of a messenger, from the 23d day of January, 1876, to the 13th day of October, 1877, eight hundred and twenty-six dollars and twenty-nine cents.

Attest:

EWD. McPHERSON, Clerk.



E. P. THOMPSON.

JULY 15, 1882. - Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5208.]

The Committee on Claims, to whom was referred the bill (H. R. 5208) for the relief of E. P. Thompson, having had the same under consideration, make the following report :

E. P. Thompson, the claimant, has been the assistant postmaster and cashier of the post-office at Indianapolis, Ind., since the 1st day of July, 1881. As such assistant postmaster and cashier, he gave a bond of indemnity to the postmaster; and as such assistant postmaster and cashier, he had the charge and custody, among other government property, of the postage-stamps, stamped envelopes, and postal-cards in said office, and was responsible for the same to the postmaster.

On or about the 1st day of February, 1881, John Wilson, a colored man in the employ of said post-office as messenger and porter, stole from said post-office postage-stamps and postal-cards which were under control of said Thompson as such assistant postmaster and cashier, of the following denominations and value :

1,600 2-cent postage-stamps, value.....	\$32 00
400 5-cent postage-stamps, value	20 00
2,000 15-cent postage stamps, value.....	300 00
500 1-cent postal cards value	50 00
Total money value.....	357 00

Said Wilson was arrested and indicted for said larceny, and on the 12th day of May, 1881, plead guilty to said indictment in the district court of the United States for the district of Indiana, and was on that day sentenced to eighteen months' imprisonment for said offense in the State prison at Michigan City, Ind., and he is now serving out said sentence in said prison.

At the time said Wilson was arrested, \$19 worth of the postage-stamps in question was found in his possession and recovered.

The evidence in this case shows that the balance of said postage-stamps and the postal-cards thus stolen by said Wilson was destroyed by him by his burning the same. The said Thompson, on the 31st day of March, 1881, paid over to W. R. Holloway, the postmaster at Indianapolis, the sum of \$338, the value and amount of postage-stamps and postal-cards which were not recovered of said Wilson, but which were

burned, and said sum of \$338 was accounted for by said postmaster to the government.

As the evidence in this case shows that the postage-stamps and postal-cards in question were destroyed by the thief, so that the government will not suffer any loss by refunding this amount to the claimant, the committee are of opinion that this bill should pass, and recommend passage of the same.

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ROBERT TRAVILLA.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5940.]

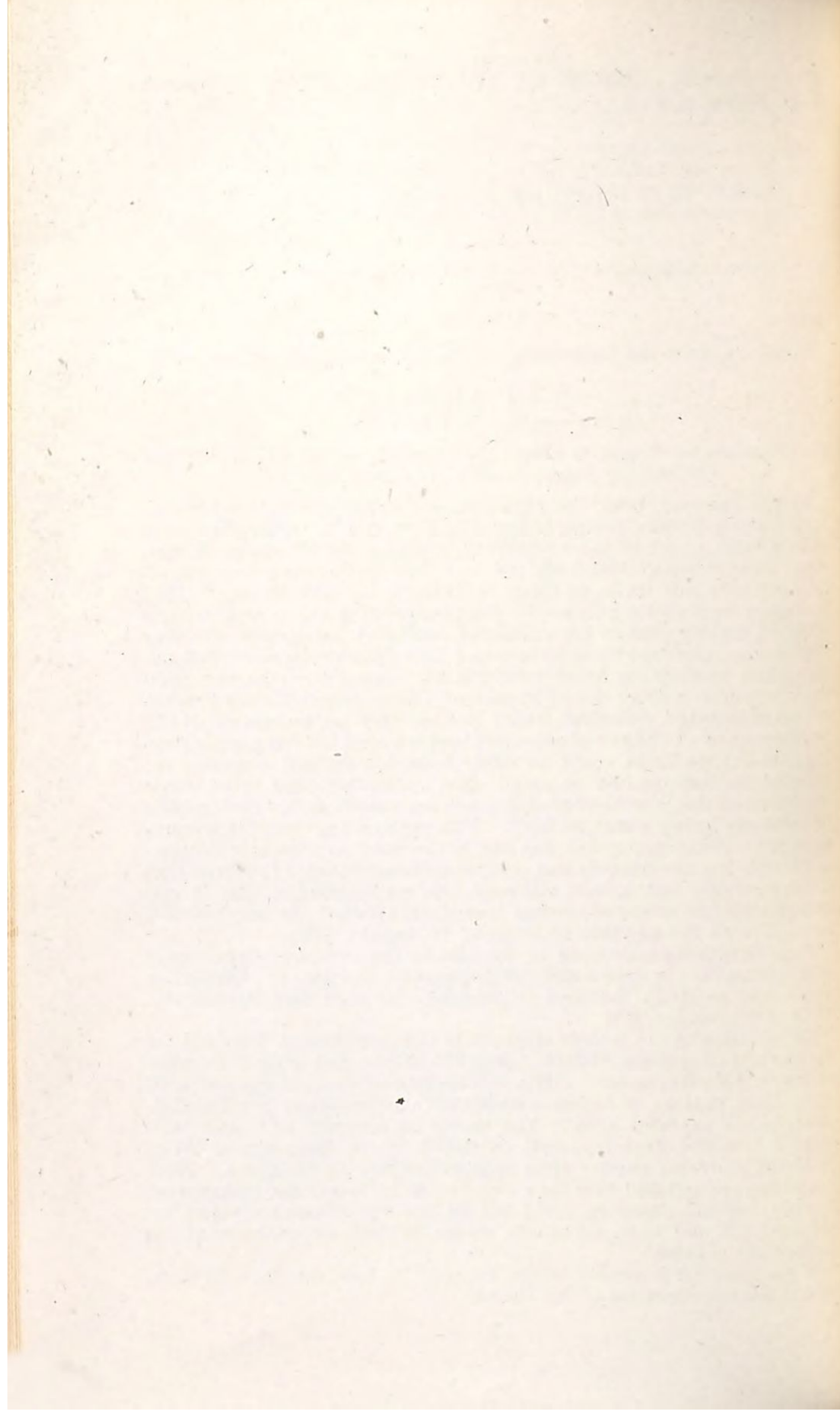
The Committee on Claims, to whom was referred the bill (H. R. 5940) for the relief of Robert Travilla, report as follows:

That in January, 1868, the claimant was a private in Company K, First United States Cavalry, engaged in duty in Arizona Territory, and as such, with a part of same command, crossing the Wachuca Mountains. That claimant had had, and was then quite weak from the effects of, chills and fever, incident to exposure in that climate. That the troops were picking their way dismounted over the mountain, and claimant, finding that in his exhausted condition his carbine was very burdensome, attached it, as he believed, in a secure manner to his saddle; while leading his horse, climbing and descending the mountain track, which was along the rocky side of a deep gorge, it became, without his knowledge, detached, which fact, as soon as he discovered it, he reported to the officer in command and retraced his steps, endeavoring to find it, as far as could be safely done, but without success. He reported the carbine lost as above stated. At this time there was a regulation of the War Department (now rescinded), fining each soldier for *carelessly* losing a carbine \$100. This carbine lost cost the government \$25. No investigation was had in the case, no trial or hearing as to whether it was *carelessly* lost, and no decision was ever rendered that it was a *careless* losing, and claimant had no knowledge that it was even reported as a case of *careless* loss, until his final discharge he did not receive all the pay that he believed belonged to him.

There is nothing appearing in the case by the report of department or otherwise that indicates any carelessness on the part of claimant or reason why he should be fined or punished for such loss beyond the value of the carbine, \$25.

Examination of the records shows that the government deducted for the loss of this carbine, \$100.60, being \$75.60 over and beyond its value or loss to the government. After claimant's discharge, it was not until April, 1880, that he obtained authoritative information how the deficiency in his payment arose. The money so retained had then been covered into the Treasury, and, as stated by the Secretary of War, could not be drawn except upon reappropriation by Congress. Your committee are satisfied that the amount over the loss to the government is justly due said claimant, being \$75.60, and the amount covered by proposed bill, and as an act of late justice to claimant, recommend the passage of the same.

It was reported favorably by the Forty-sixth Congress, but failed to receive the consideration of the House.



MARY J. TRIMBLE.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Claims, submitted the following

R E P O R T :

[To accompany bill H. R. 4737.]

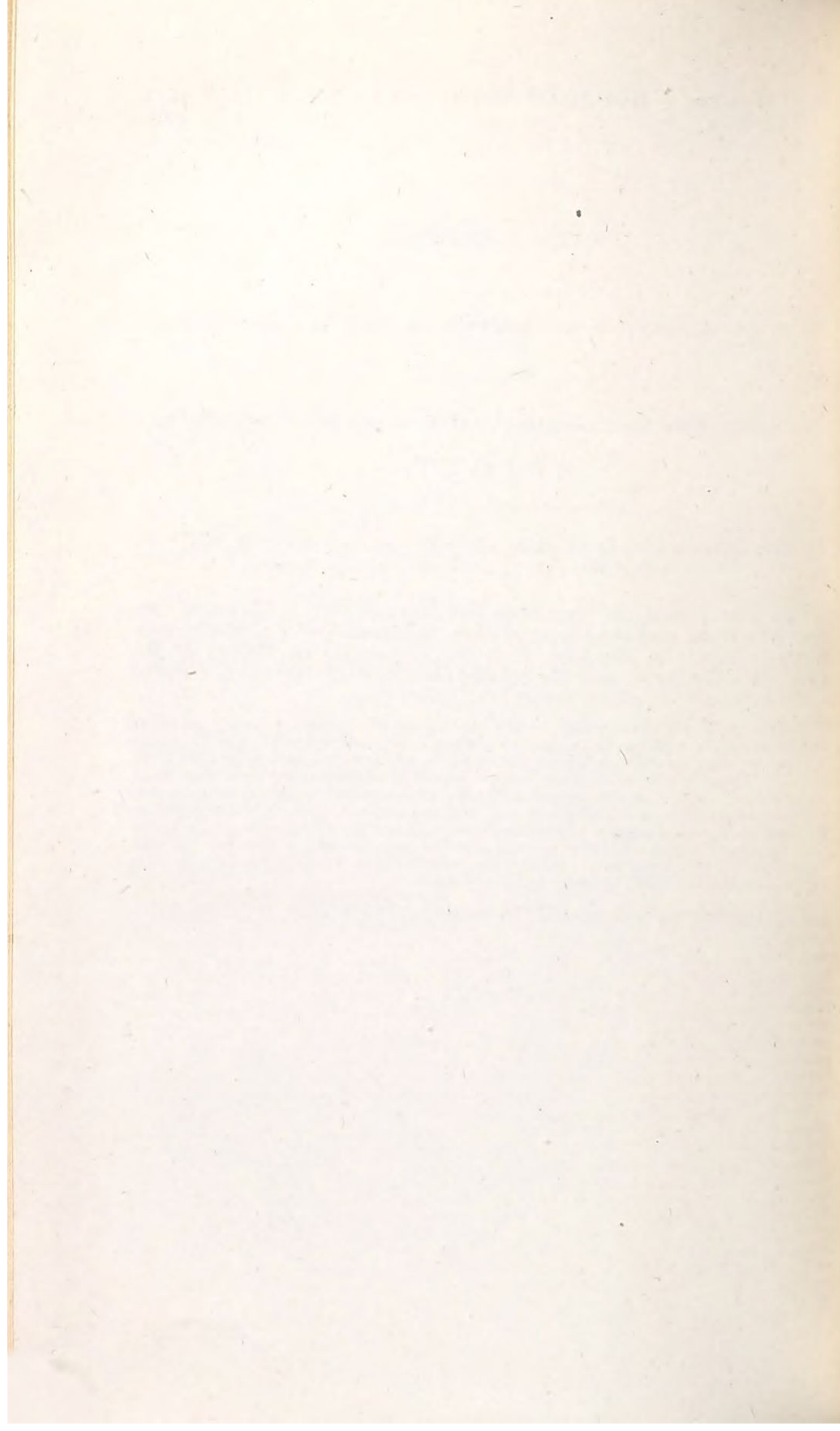
The Committee on Claims, to whom was referred the bill (H. R. 4737) for the relief of Mary J. Trimble, respectfully report:

That your committee have examined the evidence in this case presented to them, and the report of Hon. William Bowman, who made a favorable report in this case, from the Committee on Claims of the Forty-sixth Congress; and the report drawn by Mr. Bowman is adopted by your committee, which report is as follows:

That the petitioner is the widow of the late Henry W. Trimble, formerly consul of the United States at Milan, Italy, and who, while in the actual discharge of his duties at that post, was, by a dispatch from the Department of State, dated August 17, 1876, ordered to close his office and return home. He was further informed by said dispatch that he would be entitled to compensation for home transit, as established by law. Upon his return his account was duly rendered and audited; and, as is stated by the Secretary of State (in a letter to your committee, dated March 13, 1880), "it appears that the sum of \$68.50 was found to be due to the [late consul], which was not paid for want of an appropriation." Since that time the said Trimble has died, leaving the petitioner, his widow, financially embarrassed.

Your committee recommend the passage of this bill.

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STATE NATIONAL BANK OF LOUISIANA.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HUTCHINS, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 6040.]

The Committee on Claims, to whom was referred the bill (H. R. 6040) for the relief of the State National Bank of Louisiana, having examined the same, submit the following report:

The matter has been carefully investigated by the Senate Committee on Claims in the present Congress, and also by your committee, and have concluded to adopt as their own the report made to the Senate by Senator Jackson, of the Senate Claims Committee, of the present Congress.

We therefore report back the bill (H. R. 6040) and recommend its passage.

We annex hereto the report made by Mr. Jackson.

The Committee on Claims, to whom was referred "a bill for the relief of the State National Bank of Louisiana," having examined the same, make the following report:

That the State Bank of Louisiana, a banking corporation chartered by the laws of Louisiana, and located at the city of New Orleans, in 1863, while said city was in the permanent occupation and control of military forces of the United States, through its agents, contracted with various parties residing in upper Louisiana and Arkansas, who had raised and were the private owners thereof, for the purchase of several hundred bales of cotton. At the dates of these contracts of purchase the venders resided within the lines of the Confederate forces, and commercial relations between the bank and themselves were prohibited, both by the general and statute laws of the government and by the proclamation of the President of the United States, made under and in pursuance of said laws. The cotton thus purchased or contracted for remained in the possession of the several venders until after the 30th June, 1865, when, hostilities having ceased, it was delivered over to the agent of the bank, and by said agent collected together at different points preparatory to shipment to New Orleans.

After the cotton had thus reached the possession of the bank, and while awaiting shipment to New Orleans, special Treasury agents of the United States on the 27th and 29th July, 1865, and the 18th November, 1865, seized the same and caused it to be shipped to Simeon Draper, the agent of the Treasury Department at New York, by whom it was sold, and the proceeds paid into the United States Treasury. The State Bank of Louisiana, after the close of the war, having been merged into the State National Bank of Louisiana, the latter, as the successor to all the rights and interests of the former bank, made claim to the proceeds of this cotton, but its claim was rejected by the Treasury Department. The bank thereafter, on the 21st September, 1877, instituted an action in the Court of Claims for the recovery of said proceeds, and was defeated in said court by the plea of the statute of limitation. The object of the present bill is to allow the bank to have its claim referred to the Court of Claims for trial and adjudication, just as though the action had been filed in said court

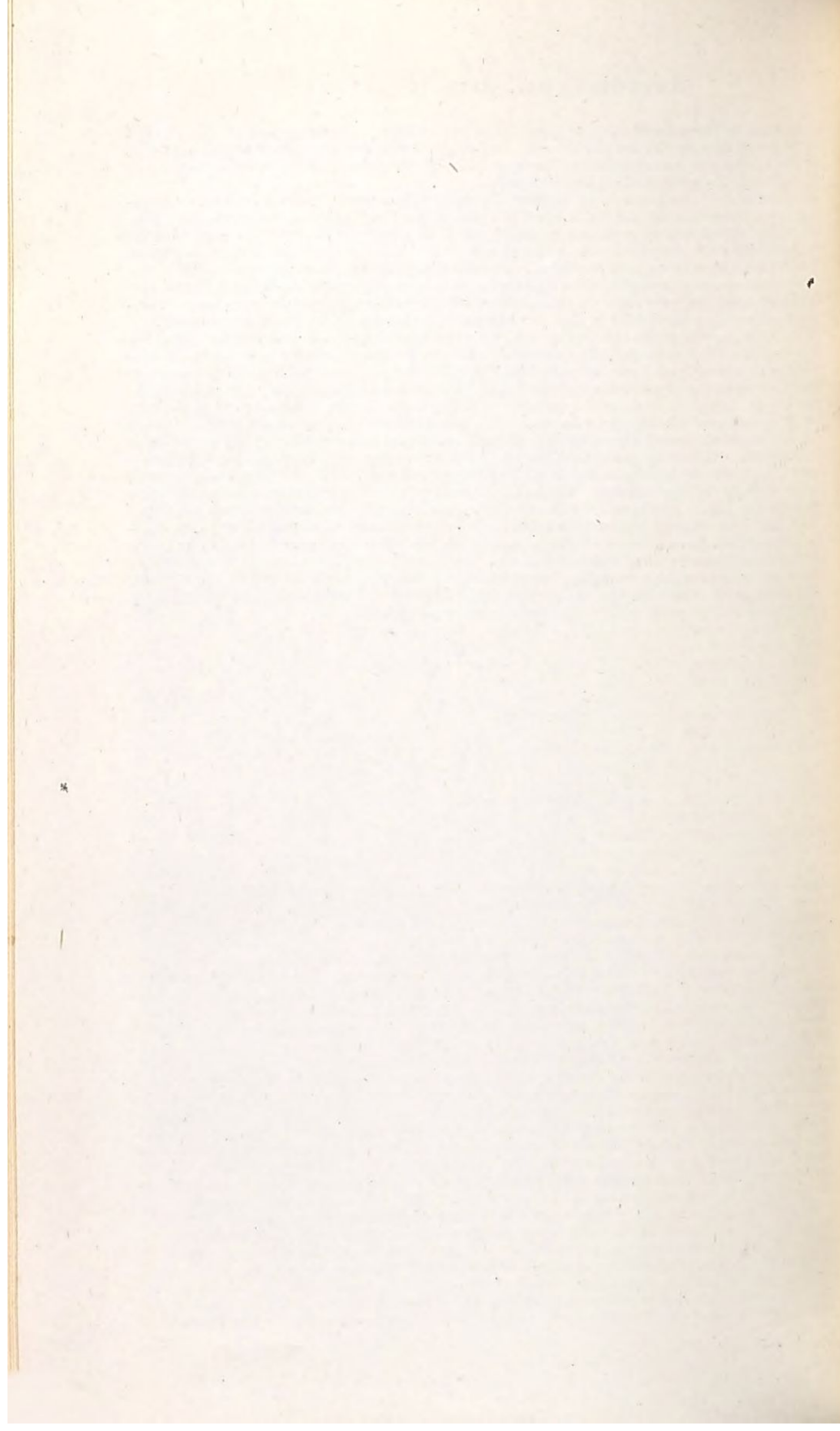
within the time authorized by law. Its claim before the department was not finally determined until after the law of the statute had attached. The rejection of the claim by the department was based upon the ground that its purchases having been made in 1863 from parties occupying an enemy relation, the bank failed to acquire title to the cotton, and had therefore no valid claim to its proceeds. If the case stood alone upon the contract for the purchase of the cotton in 1863, the correctness of this ruling could not be well questioned. The decisions of the Supreme Court of the United States in *Montgomery vs. United States*, 15 Wallace, 395, and *Mitchell vs. United States*, 21 Wallace, declare that such contracts of purchase would fail to confer a valid title to the property, and your committee at the present session of Congress have reported against a bill granting relief as to the proceeds of property in a case where the party, by his purchase from inhabitants of insurrectionary districts in violation of the non-intercourse laws of the United States, failed to acquire a valid title. So that if nothing appeared in the present case except the bank's purchase of the cotton in 1863 from venders residing within the Confederate lines, it could not be distinguished from the Mitchell claim, and would be controlled by the principles applied in that case.

But there are important particulars in which the present differs from the Mitchell case. The bank's contract for the purchase of the cotton was not completed in 1863, or during the period of actual war. It had paid and the venders had received the purchase money, but the cotton remained in the possession of the venders under an agreement for its *future delivery*. If the venders had subsequently refused to make delivery and complete the contract, and the bank had tried then, either during or after the war, to recover the cotton, it would have been non-suited in any court of the United States if the illegality of the contract had been pleaded, or if the same had appeared to the court in the course of the trial. The planters did not, however, avail themselves of the illegality of the contract, but on the contrary, recognizing the moral obligation which rested upon them, after receiving the purchase money, they voluntarily completed the contract and delivered the cotton over to the possession of the bank after the war had actually closed. Was this delivery, which appears to have been made subsequent to June 30, 1865, in contravention of law or of the non-intercourse acts and regulations of the government? If the parties could *at that time* have lawfully made an original contract with each other for the sale and purchase of the cotton in question, it is difficult to see any valid reason why they could not *then*, without violation of law or public policy, recognize as binding and complete a contract previously entered into, no intervening rights having attached. Sunday contracts are generally prohibited or forbidden by law; but, when completed on Monday, by delivery, their validity cannot be impeached. The controlling question, therefore, in the present case is, could these parties lawfully hold commercial intercourse with each other when the cotton was delivered; or rather, was such delivery, either as an original transaction or as the consummation of a previous agreement, in violation of law?

On the 24th June, 1865, the President of the United States, by proclamation issued under authority of law, *expressly* ordered that "*all restrictions upon internal, domestic, and coastwise intercourse and trade, and upon the purchase and removal of products*" lying west of the Mississippi River (excepting those relating to property *heretofore* purchased by the agents or *captured* by or surrendered to the forces of the United States) *are annulled*. Under this express authority given by law, the bank could legally have purchased the cotton. The venders could have lawfully sold or given it to the bank. When the venders after this proclamation delivered the cotton to the bank, it was in effect either a *new sale* based upon the valuable consideration previously received or a voluntary relinquishment and donation of all their rights and title to the property. But suppose it is treated as the affirmation or confirmation of the contract of purchase made in 1863, what rule of law or principle of public policy forbids the *ratification* of that contract after June 24, 1865, before the government had seized or captured the cotton? As a general proposition, *void*, as distinguished from *voidable*, contracts cannot be confirmed, for the reason that the same legal objections arising from positive law or public policy continue to operate when the confirmation is attempted which existed at the formation of the original contract. But when that is not the case, when the law or public policy that originally vitiates the contract has been changed, when the legal objections to such contracts have ceased to operate, there is no reason why the parties thereto may not lawfully ratify or reaffirm their agreement. If this position is correct, the act of the venders in ratifying and completing their contracts by delivery of the cotton after the restrictions upon commercial intercourse had been removed, conferred upon the bank a title to the property just as valid as though the contract had been *first* entered into at the date and place of delivery; so that the case is narrowed down to this, that after all hostilities had terminated and the President had, by his proclamation, removed all restrictions upon trade in the districts formerly declared to be in insurrection, the bank applied to the planters who agreed to sell it their cotton in 1863 and requested them to recognize and complete their agreement and confer upon the bank the possession and ownership of the cotton. This they

might have refused to do, but feeling the *moral* obligation arising out of the receipt of the money the bank had paid them, they freely delivered the cotton to the agent of the bank, when it was lawful for them to hold intercourse, and before any intervening rights of the government had attached.

Under those circumstances the transaction may well be termed either a valid confirmation of a former contract, or a new sale as of the date of such delivery, or a gift. When the cotton was so received in 1865 it must be admitted that the *possession* which the bank thereby acquired was a legal one. The cotton had never been captured "*flagrante bello*;" it had never been abandoned nor seized as such, consequently the United States never acquired the right of seizure coupled with possession before the bank perfected both its title and possession. Whether the agents of the Treasury Department had any authority in law for the seizing this cotton in the possession of the bank at the several dates already given is, in the opinion of your committee, a matter of such grave doubt, to say the least of it, as to make this a proper case for the decision of some competent judicial tribunal. What the bank now asks is that it may be permitted to sue in the Court of Claims, and that said court shall hear and adjudicate the case as though it had been instituted within six years after the seizure of the cotton by the officers of the government. The proceeds of the cotton are in the United States Treasury, placed there by the alleged wrongful acts of special agents of that department. The bank prosecuted its claims to these proceeds before the department, hoping for a favorable decision, until its remedy in the Court of Claims was barred by the statute of limitations. Again, claimants in this class of cases were not supposed by the legal profession to have any remedy in the Court of Claims until the Klein case was decided in December, 1871. Under those circumstances the bank, having been guilty of no "*laches*," should not be deprived of the opportunity to have its claim passed upon by the Court of Claims. It would certainly be against conscience for the government, in a case like the present, to keep this money and deny to the bank the privilege of establishing its superior right thereto. Your committee accordingly recommend the passage by the Senate of the accompanying bill.



JACOB SENNER AND ELIZABETH SENNER.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HUTCHINS, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 2804.]

The Committee on Claims, to whom was referred the bill (H. R. 2804) for the relief of Jacob Sener and Elizabeth Sener, respectfully report:

That they find that the committee made a favorable report on a similar bill during the second session of the Forty-fifth Congress, which failed to be reached on the calendar. Subsequent testimony filed with your committee from the United States district attorney and others satisfies us that the relief asked for is reasonable, proper, and just.

The former report is therefore made a part of this, and your committee report back the bill (H. R. 2804) and recommend its passage.

[House Report No. 371, Forty-fifth Congress, second session.]

MARCH 8, 1878.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. JOSEPH J. DAVIS, from the Committee on Claims, submitted the following report (to accompany bill H. R. 3736.)

The Committee on Claims, to whom was referred the claim of Jacob Sener and Elizabeth Sener, have had the same under consideration, and submit the following report:

In July, 1867, Frederick Sener was a distiller of spirits in Lancaster County, Pennsylvania, and on the 23d day of that month 2,527 gallons of unrectified whisky or high wines were gauged for him by Abram B. Hiestand, United States gauger for the ninth district of Pennsylvania.

On the 24th day of July, 1867, this whisky was placed in the cars at the warehouse at Mountville, on the Philadelphia and Columbia Railroad, and shipped to Harrisburg, under a transportation bond given by said Frederick Sener as principal, with John Sener and Benjamin Mishler as sureties. From Harrisburg it was shipped by the Northern Central Railroad to Baltimore, consigned to the bonded warehouse at Spear's wharf, No. 22, in that city.

The cars containing the whisky were locked at Mountville by the gauger and inspector, and the whisky was in the custody or under the control of the United States Government officers till it arrived at Baltimore. On the 25th of July an order was given by the storekeeper of "Noble's United States bonded warehouse, 22 Spear's wharf, Baltimore," to the agent of the Northern Central Railroad Company to "deliver to bearer the fifty barrels whisky consigned in bond to this warehouse." This order was signed by "C. G. Woodside, storekeeper." Under this order the agent delivered the whisky to a person purporting to be J. Calvin Page, but this seems to have been a fictitious name.

The whisky was not carried to the bonded warehouse to which it was consigned, but was carried to the rectifying establishment of one Benjamin Brown, in the city of Baltimore, where it was taken from the original barrels and emptied into his rectifying-tubs. The barrels or casks were refilled with water and then conveyed, thus refilled, to the bonded warehouse at Spear's wharf; this was July 27. The fraud having been discovered, the storekeeper notified William A. Wiley, collector, &c, for the ninth district of Pennsylvania, who declared the transportation bond forfeited and

proceeded to collect the tax and penalty, amounting to \$7,581. Sener and sureties were advised by counsel not to pay it "on the ground that the whisky had been delivered into the hands of the government officers at Baltimore, which was all the law required of them to do, and they were discharged from all liability on the bond," but the collector having seized their property, they paid the tax and penalty under protest, and under the assurance given by the collector that it would be refunded. The money was paid by the sureties. It does not appear that Sener had any connection with the fraud, or that he had any knowledge of it. On the contrary, the collector, in his affidavit on file in the department, says, "I did not believe then and do not believe now that F. Sener had any connection with any fraud, coupled with said whisky, and so informed the department at the time."

Frederick Sener became insolvent. Jacob Sener paid Mishler's part and took an assignment from him. John Sener became insolvent and made an assignment for the benefit of his creditors, and his interest in this claim was exposed to sale by the assignees and purchased by Elizabeth Sener, and it was transferred to her.

The sureties filed their application to have the tax and penalties refunded on the 29th day of April, 1870, the delay having been caused by litigation. The application was rejected on the 15th day of June, 1871, for the reason, assigned by the Commissioner, that "the facts submitted do not present such a case for relief as is contemplated by law."

It does not appear what became of the whisky after it reached Brown's establishment, nor does it appear that the tax on it was paid before it was permitted to leave that establishment. One John K. Barr was charged with the fraud and was indicted in the United States court for the district of Maryland, at December term, 1867, but he was acquitted, and it is remarkable that so bold a fraud could have been perpetrated without detection of the author or authors of it. It was admitted in the trial of Barr, that Sener had no knowledge of or connection with the fraud, and it does not appear that any charge or suspicion rested against him in relation to it. Hon. A. Herr Smith certifies that "the Seners who are interested in the claim now pending before your committee" are personally known to him and are among the most "trustworthy citizens."

The whisky was under the charge of the government officers; was beyond the control of Sener or his sureties; they had no agency in the fraud, which was perpetrated in Baltimore, and although it does not appear by whom it was perpetrated, it seems to have been conceded by the government that Sener had no cognizance of it.

It may be said that they should have followed the advice of counsel and resisted the payment in court, but their property having been seized and the collector having assured them that the money would be refunded, it was not unnatural that they should have desired to avoid litigation and supposed this the speediest as well as the cheapest way of settling the matter.

The facts are fully sustained by the affidavits of John Sener and Jacob Sener; the affidavits of Fred. Sener, with certificates of the assistant assessor, assessor, and collector; affidavits of Collector Wiley and Inspector Hiestand; the affidavit and protest of I. B. Amwake, attorney for Fred. Sener; the affidavit of Benj. Mishler, and the testimony in the case of the United States *vs.* John K. Barr.

The committee are of opinion that the tax and penalty ought to be refunded and paid to the sureties or their assignees, and they report the accompanying bill with the recommendation that it do pass.

ELIZABETH FLEMING, FRANCES E. ROBINSON, AND MARY
AND MARGARET JOHNSTON.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HUTCHINS, from the Committee on Claims, submitted the following

R E P O R T :

[To accompany bill H. R. 6754.]

The Committee on Claims, to whom was referred the bill (H. R. 6754) for the relief of Elizabeth Fleming, Frances E. Robinson, and Mary and Margaret Johnston, having considered the same, respectfully report:

The facts of the case, as they appear from the papers on file, are as follows:

On the 1st of May, 1877, a number of men in the employ of the government were at work in a room under the roof of the post-office in New York City. An iron truss had been placed under a portion of the roof to strengthen the wall, which had become cracked. The work had just been completed, and while the men were engaged in cleaning up the room, the truss fell, carrying with it a portion of the roof. Dennis Fleming, Charles H. Robinson, and Patrick Johnston were killed. From the evidence taken before the coroner's jury, and sworn to, it appears that the falling of said portion of the roof was caused by the improper and insufficient construction of the same. The coroner's jury, which was composed of some of the leading architects of New York City, say—

We further find that an excessive quantity of concrete was used in the covering of the roof, and that the load thereby imposed upon the iron roof-beams and their supports, exceeded the weight for which the iron construction was originally designed, by more than 300 per cent.

According to all the evidence before your committee, it appears that the death of the parties named was caused by the carelessness of the government officials in charge of the construction of the building, and your committee therefore recommend the passage of the accompanying bill.

Your committee also append a statement of precedents in similar cases.

An act for the relief of the family of the late John T. King and L. B. Cutler, carpenter and cabinet-maker at the Capitol, Forty-fourth Congress, approved July 19, 1876.

Senate Report, No. 292, and House Report, No. 763, first session Forty-seventh Congress, in the case of the Frankford Arsenal explosion.

House Report, No. 1434, first session of the Forty-seventh Congress, in the case of the Pittsburgh Arsenal explosion.

[PRIVATE—No. 101.]

AN ACT for the relief of the family of the late John T. King and of L. B. Cutler.

Whereas John T. King, lately employed as a carpenter and cabinet-maker about the Capitol, while in the discharge of his duties, was killed by an explosion of gas in the closet under the eastern stairway of the Senate, leaving a wife, three children, two grandchildren, and a mother-in-law without any means of support; and

Whereas L. B. Cutler, principal assistant in the folding-room of the Senate, was so injured, at the same time and under the same circumstances, as to be disabled for life, leaving a wife without means of support, and a mother to whose support he has partly contributed: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the sum of three thousand dollars for the aid and support of the family of the late John T. King, and the further sum of three thousand dollars for the aid and support of L. B. Cutler, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be paid to the Secretary of the Interior in trust for the above-mentioned purposes, who may, at his discretion, pay the same to the respective parties in annual installments, or all in one payment, or invest the same for their use and benefit, as he may think most expedient.

Approved July 19, 1876.

C

HENRIETTA BUGGERT.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. W. G. THOMPSON, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 829.]

The Committee on Claims, to whom was referred the bill (H. R. 829) for the relief of Mrs. Henrietta Buggert, of Minnesota, would respectfully report:

That at the second session of the Forty-sixth Congress this claim was reported upon favorably by the Committee on Claims, in which report, No. 1725, the facts were fully and carefully stated, allowing claimant the sum of \$750; and your committee adopt said report and return said bill amended as follows: In line 5 strike out "nine" and insert *seven*, and after the word hundred, in same line, add the word "fifty"; and recommend its passage.

The Committee on Claims, having had under consideration the bill (H. R. 1742) for the relief of Henrietta Buggert, beg leave to report thereon:

The claim is for crops, household and other personal property alleged to have been destroyed or taken away by the Sioux Indians in their memorable outbreak in the State of Minnesota, in the year A. D. 1862.

The claimant and her husband, Louis Buggert, with their five children, were living upon a farm in the town of Sigel, in the county of Brown, in said State, not far from New Ulm. The outbreak was sudden and unexpected. Buggert with his wife and children sought safety in New Ulm. The danger was so imminent that he was compelled to abandon everything, except a few articles hastily gathered up in the flight. The whole section round about his home was immediately overrun by the savages, and all personal property which could not be carried away wantonly destroyed. Buggert was killed by the Indians on the 23d day of August, 1862, while acting as captain of a company in defense of New Ulm.

After the suppression of hostilities, and in December, 1862, administration was had upon the estate of the deceased Louis Buggert in the probate court of Brown County, Minnesota, and on the 13th day of that month a surviving brother, William Buggert, was appointed administrator of said estate by said court, who accepted such appointment and was duly qualified. The ravages of the Indians and the destruction of property were so widespread and the disaster of such an appalling character that prompt relief upon the part of the general government was universally demanded, and in February, A. D. 1863, an act was passed, not only for the immediate relief of the victims of the outbreak, but designed also to secure permanent indemnity for the losses incurred. (U. S. Statutes at L., vol. 12, pages 652, 653, and 654.)

In pursuance of this act the President appointed A. W. V. White, Eli R. Chase, and Cyrus Aldrich, "for the purpose of ascertaining the amount of said damages and the persons who had suffered the same."

To these commissioners William Buggert, as the administrator of the estate of Louis Buggert, presented a claim for the damages sustained by the estate in the destruction and deportation of property.

The claim appears to have been made out in due form and to have consisted of an itemized account supported by affidavits.

The claim was rejected by the commissioners. The rejection seems to have been due to a misapprehension of fact. It appears from the evidence submitted to your committee that William Buggert resided near his brother, Louis Buggert; that the brothers were joint owners of a large portion of the property destroyed; that William Buggert was also a claimant in his own right before said commissioners; that in the preparation of their respective claims the joint property was divided, each party claiming for an equal number of acres or bushels, as the case might be. Owing to this circumstance the commissioners fell into the mistake that the claims were identical, the one the duplicate of the other, and, as a consequence, concluded to reject both.

The report of the commissioners to the Secretary of the Interior is found in Ex. Doc. No. 27 to No. 50, first session Thirty-eighth Congress, vol. 9, 1863-'64. In their report the commissioners say:

"We have examined and audited two thousand eight hundred and eighteen claims and made awards thereon, which from time to time, with the complaints and proofs in each, have been transmitted to you by mail. Of the cases so audited one hundred and eighty-three have been rejected, and in two thousand six hundred and thirty-five damages have been allowed; no testimony has been offered in seventy-six cases, and forty-six complaints, after being filed and registered, have been withdrawn by the parties or their attorneys. The petitions remaining on our files in which there has been no proof or award are herewith transmitted to you for such disposition as your department or Congress may think proper to make of them.

"It is proper to say of the cases rejected some were thus adjudicated for want of sufficient evidence, and some because in our opinion they did not fall within the class for which the act contemplated relief.

"As to a few of the former class it has been represented that, in the pressure of our business, the facts were misapprehended by us and the decision was consequently erroneous. In others, that there was a hasty submission on insufficient testimony, owing to unavoidable embarrassments, which defect the parties can now supply. Some of the evidence received since our awards were made we herewith transmit to you."

The claim of Henrietta Buggert, through the administrator of Louis Buggert, was one of the class last referred to.

The testimony taken by the commissioners and that subsequently filed in the Interior Department has been furnished to your committee upon application therefor.

The testimony taken by the commissioners was filed in the Interior Department October 27, 1863, and the additional testimony submitted and filed November 27, 1863.

In the additional testimony so filed is the affidavit of Mr. D. G. Shillock, the attorney of the claimant, who explains the manner in which the schedules were made up. He says:

"When William Buggert, administrator of the estate of Louis Buggert, came to my office and engaged me to prosecute this claim as well as his own, and stating the case of said claim, he told me that he and Louis Buggert, the deceased, had been engaged as partners in farming, each of them having an equal share and interest in farming lands, crops, farming utensils, and stock, and each of them possessing individually some articles of property, consisting of wearing apparel and household goods, and that he and deceased lost most of their partnership property as well as the property that they owned individually by the Sioux Indians. I advised William Buggert, upon (his) statement, to make out two bills of lost property, one for himself and one for the deceased, specifying in each bill the property which they owned individually, respectively, and also to put on his bill, as well as the bill for the deceased, *one-half of the property which they owned in partnership* and lost by the Indians. Some time after this instruction William Buggert again came to my office with two bills or schedules which he told me he had made out according to my instructions, one for himself and one for the deceased. Each of those bills was written in German. From said bills, the schedules and the complaints in this case, as well as in the case of William Buggert, No. 395, were made out."

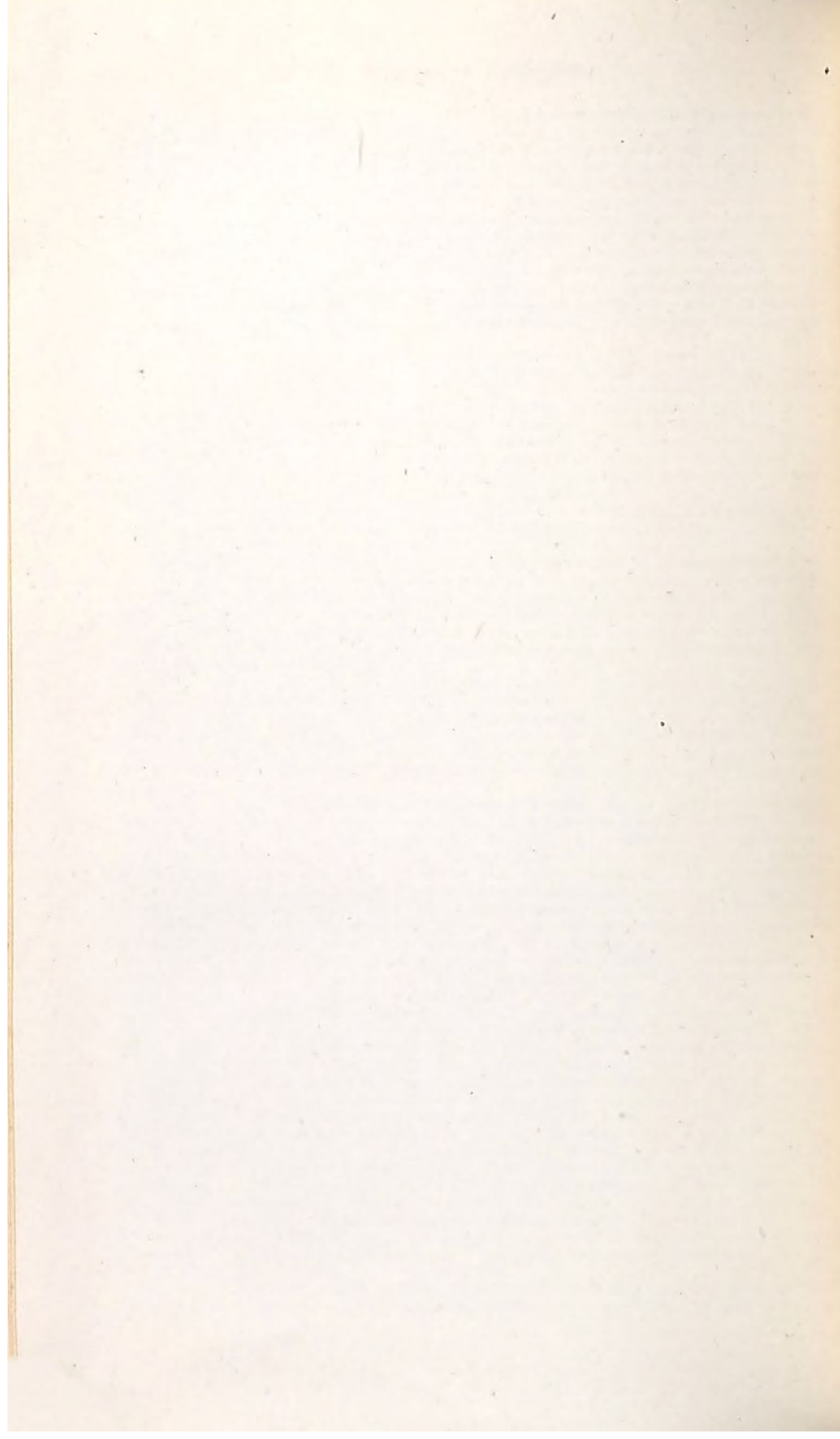
On March 3, 1868, the Senate passed a resolution directing the Secretary of the Interior to report to the Senate the names of the several claimants for indemnity for depredations by Sioux Indians under act of February 16, 1863, whose claims were unadjudicated upon by the commissioners. In obedience thereto, the Secretary of the Interior, under date of March 14, 1868, transmitted to the Senate two schedules of such names: Schedule A, embracing seventy-nine claimants, by whom no proof was submitted, and Schedule B, embracing names of twelve claimants, in regard to whose claims the commissioners reported "the hasty submission on insufficient testimony, owing to unavoidable embarrassment, which defect the parties can now supply." In this Schedule B, containing these twelve names, appears the claim of Louis Buggert, deceased, by his administrator, as No. 287, and also the claim of William Buggert, in his own behalf, as No. 395.

Your committee have carefully examined the testimony originally submitted to the commission, and that subsequently filed in the Interior Department, as aforesaid.

From this examination there is no reason, in the opinion of your committee, to doubt the claimant's right to relief; that Louis Buggert was driven from his home by the savages; that he fled with his wife and children to New Ulm for safety; that the danger was so imminent that he was compelled to abandon substantially all his household furniture, crops, stock, &c.; that he lost his life a few days thereafter in the defense of New Ulm. All this is beyond question.

The only question, in the opinion of your committee, about which there is room for debate, is the extent of the loss in the destruction, deportation, and injury to property. The total amount of loss claimed in schedule filed with the commission is \$917.47. After a careful examination of all the evidence, your committee are of the opinion that the loss thus sustained was not less than \$750; and that claimant may well be allowed that amount. Your committee, therefore, report back said House bill, with the recommendation that it be amended by the insertion of said amount and put upon its passage.

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LEONARD MYERS.

JULY 15, 1882.—Referred to the Committee on Appropriations and ordered to be printed.

Mr. PEELLE, from the Committee on Claims, submitted the following

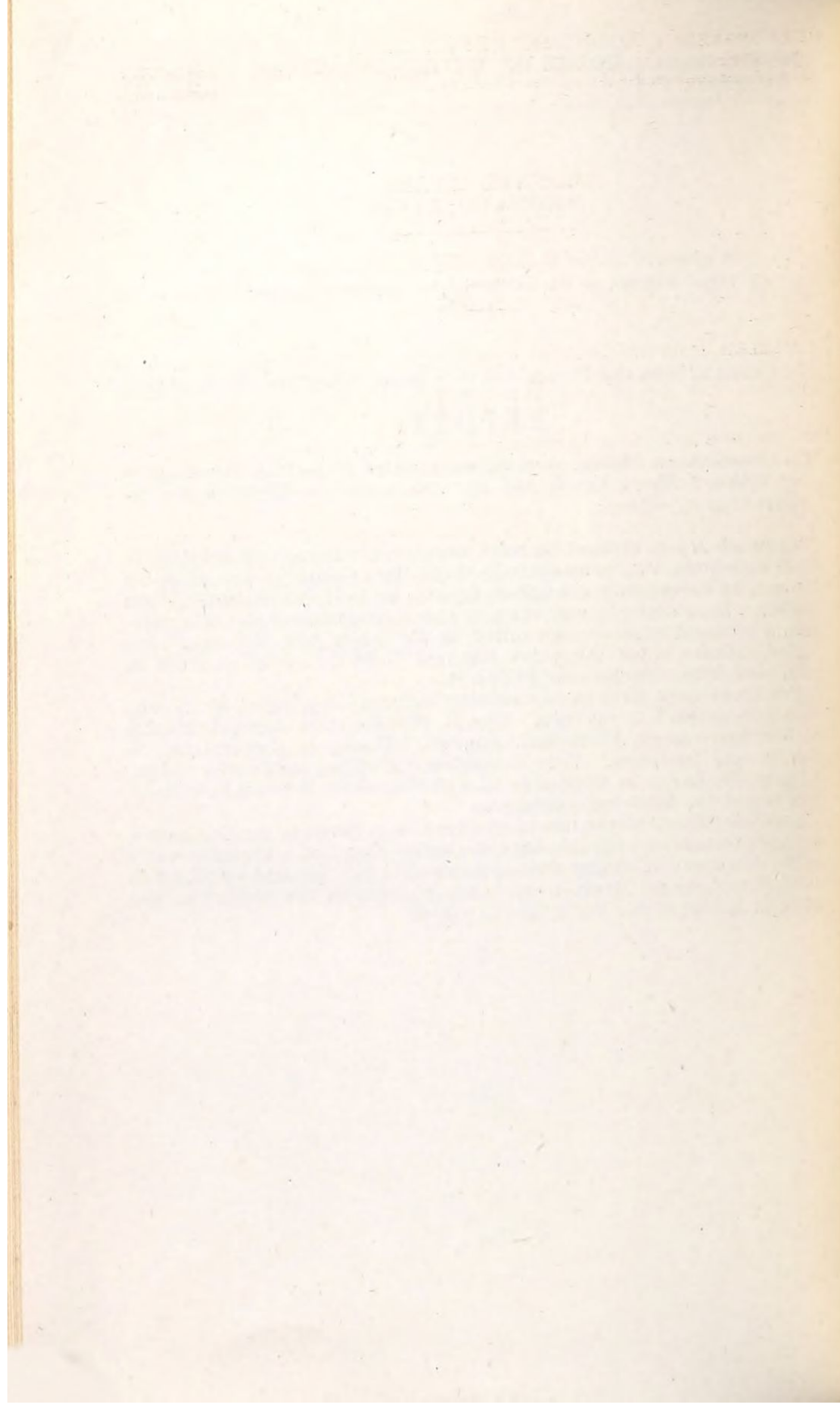
REPORT:

The Committee on Claims, to whom was referred the petition for the relief of Leonard Myers, having had the same under consideration, find the facts to be as follows:

Leonard Myers claimed to have been elected from the third district of Philadelphia, Pa., to a seat in the Forty-first Congress, and, thus believing, he successfully contested the seat held by the contestee, John Moffitt. In so doing he was at great expense for counsel and other necessary fees and expense, amounting in the aggregate, petitioner says under oath, to about thirty-five hundred dollars, and he presents to your committee vouchers for \$1,597.25.

Petitioner sets forth in his petition that the depositions of 237 witnesses were taken in the case. (See H. Mis. Doc. No. 3, pages 224, 225 to 310, first session Forty-first Congress.) Copies of vouchers will be seen in said document. Your committee can see no reason why the petitioner should not be allowed at least \$2,000, and your committee therefore report the following resolution:

Resolved, That the petition in this case be referred to the Committee on Appropriations, with the recommendation that said committee insert in the deficiency or sundry civil appropriation bill the sum of \$2,000 to be paid to Leonard Myers in full of his expenses for contesting the seat of John Moffitt in the Forty-first Congress.



W. W. LESTER.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PEELLE, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 6755.]

The Committee on Claims, to whom was referred the joint resolution (H. Res. 62) for the relief of W. W. Lester, having had the same under consideration, report:

That W. W. Lester was employed as a laborer in the document-room of the House of Representatives during the Forty-sixth Congress; that during the summer and fall of 1881 extensive repairs were made in the said document-room, which necessitated a complete change of the documentary files; that while so employed as a laborer, it became necessary for him to perform the duties of a messenger in removing and rearranging said files, which lasted some six or eight months. For the services so rendered as a messenger he claims the difference in the pay of a messenger and that of a laborer. The work seems to have been necessary, and his employers speak well of him and of the service he rendered, and recommend that he be paid a larger sum than your committee think necessary, but in view of the facts your committee think he ought to be allowed \$100 for such services in addition to the pay received by him as a laborer, and your committee therefore report the accompanying bill as a substitute for the resolution referred to your committee, and recommend that the same do pass.

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MARCOS RADICH.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HOUK, from the Committee on War Claims, submitted the following

R E P O R T :

[To accompany bill H. R. 6756.]

The Committee on War Claims, to whom was referred the petition of Marcos Radich, submit the following report :

The facts out of which this claim for relief arises will be found stated in Senate report of the Committee on Claims, No. 54, first session Forty-seventh Congress, a copy of which is hereto appended.

Your committee adopt the said report as their own, and report the accompanying bill and recommend its passage.

[Senate Report No. 54, Forty-seventh Congress, first session.]

The Committee on Claims, to whom was referred the bill (S. 619) for the relief of Marcos Radich, have considered said bill, and report thereon as follows :

A bill for the relief of Marcus Radich was introduced in the Senate during the Forty-sixth Congress and referred to the Committee on Claims. It was assigned to Mr. Teller, as a subcommittee, for examination. On the 1st of March, 1880, Mr. Teller inclosed the duplicate vouchers hereinafter set forth to General M. C. Meigs, Quartermaster-General, and asked for all papers and any other information relating to said claim in the Quartermaster-General's Office.

On the 15th of March, 1880, Mr. Teller's letter was returned to him from the Quartermaster-General's Office, with the following indorsement thereon :

“ QUARTERMASTER-GENERAL'S OFFICE,
“ Washington, March 16, 1880.

“ Respectfully returned, by direction of the Quartermaster-General, to Hon. H. M. Teller, United States Senate, Washington, D. C., and attention invited to copy of letter of September 3, 1866, which is the last action of record in this office, and also to the act of February 9, 1867, as given on page 3 of General Orders No. 59, of 1867, Quartermaster-General's Office.

“ The transfer and amount as stated in voucher for \$260 is found to have been duly reported to this office.

“ Regarding the voucher for \$180, it is found that on Captain Plato's form 2 for January, 1866, he takes the building up with 13 others, with remark, ‘ No rate of rent agreed upon. These buildings (14 in all) I found occupied upon assuming the duties here of supervising quartermaster, but these were not transferred to me by my predecessor. I consider it important that they should be reported as in occupation of the government.’

“ The report is same in February and March, 1866. Reported also on his April rolls at \$60 per month, with remark, voucher given to March 31, 1866.

“ Captain Plato's rolls are approved by his commanding officer, General G. W. Getty.

“ JAS. L. MOORE,
“ Quartermaster U. S. A.”

The letter referred to in this indorsement is as follows, viz :

“ WAR DEPARTMENT,
“ QUARTERMASTER-GENERAL'S OFFICE,
“ Washington, D. C., September 3, 1866.

“ Col. C. G. SAWTELLE,

“ *Chief Quartermaster, Department of the Gulf, New Orleans, La.:*

“ COLONEL: The papers in the claim of Marcus Radich for rent of building at Brownsville, Tex., inclosed in the letter of Col. S. H. Manning, chief quartermaster, Department of Texas, and transmitted by you to this office for examination on the 2d ultimo, are herewith respectfully returned, with the information that, under instructions from the War Department, rent in Texas cannot be considered prior to the President's proclamation of August 20, 1866.

“ By order Quartermaster-General.

“ Very respectfully, &c.,

“ J. J. DANA,
“ Colonel, Quartermaster's Department, Bvt. Brig. Gen., U. S. A.”

The following is a copy of the duplicate vouchers transmitted to General Meigs by Mr. Teller, as hereinbefore set forth :

“ No. 22.

“ *The United States to Marcus Radich, Dr.*

“ 1866, March 31. For rent of building on Elizabeth street, occupied as an ordnance warehouse, from August 21, 1865, to December 31, 1865, being four months and ten days, at \$60 per month. \$260

“ BROWNSVILLE, TEX.

“ This voucher is given subject to the approval of the chief quartermaster, Department of Texas, whose particular attention is called to Maj. O. O. Potter's certificate on No. 53, viz :

“ “ I certify that the transfer list bearing date January 1, 1866, but actually transferred on the 24th day of April, 1866, contains the building actually occupied, with the true time and rental determined by a board of officers; that circumstances beyond my control prevented me from making the actual transfer sooner.

“ “ O. O. POTTER,
“ “ Maj. and Chief Quartermaster, Dept. Rio Grande.”

“ Was transferred to me by Maj. O. O. Potter, late chief quartermaster, Department of the Rio Grande, on the 24th day of April, 1866, with the above amount due and remaining unpaid, said transfer list bearing date January 1, 1866.

“ NELSON PLATO,
“ Capt. and Quartermaster, Sup. Dept. Rio Grande.

“ No. 22.

“ *The United States to Marcus Radich, Dr.*

“ 1866, March 31. For rent of building on Elizabeth street, occupied as an ordnance warehouse, from January 1, 1866, to March 1, 1866, both days inclusive, being three months, at \$60 per month. \$180

“ BROWNSVILLE, TEX.

“ This voucher is given with the above rental per month, subject to the approval of the chief quartermaster, Department of Texas, no rent having been reported by me heretofore, nor any transferred by my predecessor.

“ I certify that the above account is correct and just; that the services were rendered as stated, and that they were necessary for the public service, and that the services have been reported by me, according to Army Regulations, as per my report of persons and articles for January, February and March, 1866.

“ NELSON PLATO,
“ Capt. and Asst. Quartermaster, Supt. Quartermaster D. R. G.”

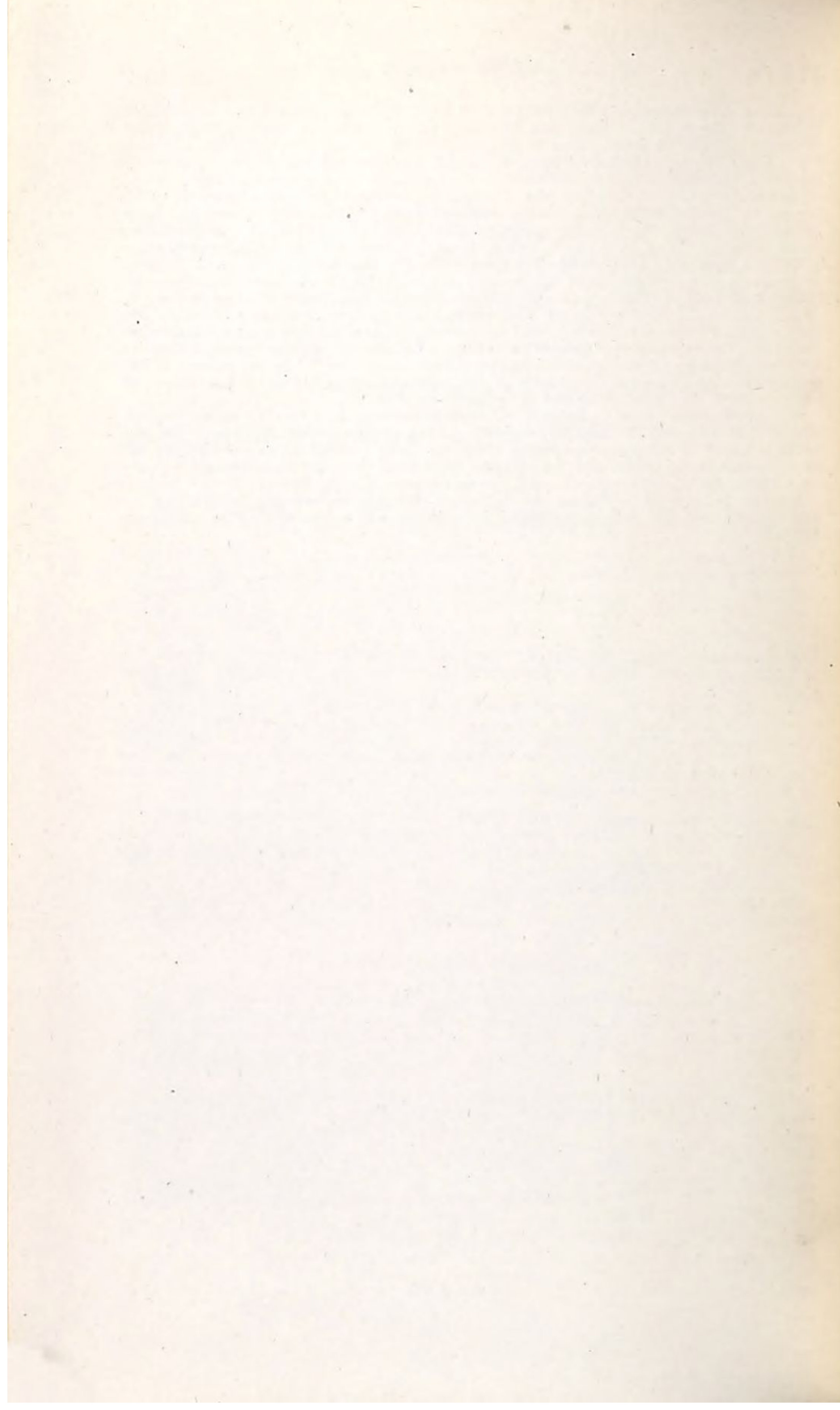
The act of February 21, 1867 (vol. 14, U. S. Stat. at Large, page 397), provides that the act of July 4, 1864, "shall not be construed to authorize the settlement of any claim for supplies or stores taken or furnished for the use of or used by the armies of the United States, nor for the occupation of or injury to real estate, nor for the consumption, appropriation, or destruction of or damage to personal property by the military authorities or troops of the United States, where such claim originated during the war for the suppression of the Southern rebellion in a State or part of a State declared in insurrection by the proclamation of the President of the United States dated July 1, 1862, or in a State which, by an ordinance of secession, attempted to withdraw from the United States Government." On August 20, 1866, the President, by proclamation, declared that the insurrection in the State of Texas was at an end.

Under said act of February 21, 1867, the departments have refused to pay any claims originating in the insurrectionary States from the beginning of the insurrection to the date of the President's proclamation declaring the insurrection at an end, whether such claims arose under contracts or otherwise. And thus all persons whose just claims are based upon an express contract between themselves and the proper officers of the government, made within the limits of the insurrectionary States within the period above named, are forced to appeal to Congress for relief.

This claim arose out of a contract between the claimant and the proper quartermaster. It was duly certified and reported by the quartermaster, and a record of the claim is in the Quartermaster-General's Office. Your committee are of the opinion that the claimant is entitled to be paid the amount of rent agreed to be paid by Captain Plato, the proper quartermaster, to wit, the sum of \$440.

For the purpose of rendering the bill more definite and certain in its terms, we recommend that the bill be amended by striking out and inserting as shown on the bill.

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LOUIS A. VAN HOFFMAN ET AL.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. G. D. WISE, from the Committee on War Claims, submitted the following

REPORT

[To accompany bill H. R. 6757.]

The Committee on War Claims, to whom was referred the petition of Louis A. Van Hoffman, William A. Mertens, and William H. Newman, submit the following report:

The facts out of which this claim for relief arises will be found stated in Senate Report No. 309, from the Committee on Claims, first session Forty-seventh Congress, a copy of which is hereto appended.

Your committee adopt the said report as their own, and report back the accompanying bill and recommend its passage.

[S. Report No. 309, Forty-seventh Congress, first session.]

MARCH 22, 1882.—Ordered to be printed.

“Mr. HOAR, from the Committee on Claims, submitted the following report, to accompany bill S. 595.

The Committee on Claims, to whom was referred the bill (S. 595) for the relief of Louis A. Van Hoffman and William A. Mertens, under the firm name of L. Van Hoffman & Co., and William H. Newman, have considered the same, and respectfully report:

This case has been previously under consideration by this committee, and we adopt the report made in the second session of the Forty-fifth Congress, which is hereto annexed:

[S. Report No. 486, Forty-fifth Congress, second session.]

“Mr. HOAR, from the Committee on Claims, submitted the following report, to accompany bill S. 752.

“The Committee on Claims, to whom was referred the bill (S. 752) for the relief of William H. Newman and Lewis A. Van Hoffman, have considered the same, and respectfully report:

“The loyalty of the petitioners and their title to the property occupied by the United States are proved beyond controversy. The property, known as the Pioneer Mills, at Alexandria, Va., consisted of a warehouse and mill of 80 by 122 feet, and four and a half stories or about 72 feet in height; an engine and boiler house of 30 by 22 feet, containing two engines and six cylinder boilers; a cooper's shop, with slate roof, of the dimensions of 30 by 100 feet; a vacant lot, and a spacious wharf on the Potomac. The cost of these structures was upward of \$140,000. They were on land leased from the city of Alexandria, for which a ground-rent was paid of \$1,720 a year. The property was mortgaged to three trustees to secure bonds of \$75,000 in amount. One of the trustees was disloyal, but he had only a naked title, having no interest whatever in the debt. He was removed and a successor appointed, who sold the property under legal proceedings, when it was purchased in for the benefit of the holders of the bonds,

who were Newman and Van Hoffman, the petitioners. Their loyalty is abundantly proved. They were residents of New York City, and subscribed liberally to aid in raising troops, and other loyal undertakings.

"The property was assessed at \$75,000 for the purposes of taxation.

"December 17, 1861, Major Bell, commissary of the United States Army, called upon L. J. Anthony, who was in charge of the property as agent of the owners, and informed him that the government needed it. Anthony replied that the owners would consent, provided they were to receive compensation. Commissary Bell replied that they would receive a fair rent if they were loyal. Anthony thereupon gave him the keys and he took possession of the property for the United States. Possession was retained by the United States until August 25, 1865.

"Five thousand dollars a year is an extremely low rent for this property during this period. The owners were then paying ground-rent, \$1,720, and taxes and insurance to an amount of several hundred dollars more, so that there would inure to them less than \$3,000 per annum.

"The committee report the accompanying bill and recommend its passage."

The committee therefore recommend the passage of the bill.

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ALFRED G. HATFIELD.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. G. D. WISE, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 6758.]

The Committee on War Claims, to whom was referred the petition of Alfred G. Hatfield, with accompanying documents, respectfully report:

The petitioner is a citizen of the United States and a resident of the District of Columbia. He claims relief as the son and only heir-at-law of John Hatfield, who died in the city of Washington in the year 1874.

It appears from the papers referred with the bill that on or about the 1st day of June, 1862, John Hatfield was employed by James A. Gallagher, then colonel commanding the Thirteenth Pennsylvania Cavalry Volunteers, in the military service of the Government of the United States, to act as veterinary surgeon for said regiment. At the time of the employment of John Hatfield by Colonel Gallagher veterinary surgeons were not allowed by law; but from affidavits of officers of the regiment and others it appears that the necessity existed for the employment of one. There were eight or nine hundred horses in the regiment, and many of them were affected with distemper and other diseases, and required the care, attention, and skill of a competent veterinary surgeon. John Hatfield, as such, had charge of all the horses of said regiment, under instructions from and the authority of Colonel Gallagher, from the date of his employment as aforesaid until the 3d day of March, 1863, a period of nine months, and he was paid nothing for his services rendered during that time, although the promise of payment was often repeated by Colonel Gallagher. From papers on file in the War Department it appears that John Hatfield, in December, 1863, presented his claim for recognition and pay as veterinary surgeon for nine months; that he had acted as such under the authority of Colonel Gallagher. There was then no law authorizing the employment of veterinary surgeons, and his claim was properly rejected; but on a review of the facts a warrant as veterinary surgeon was issued in his favor January 2, 1864, to date March 3, 1863, the date veterinary surgeons were authorized by law. From the 3d of March, 1863, until he was discharged, he received \$75 per month, that being the compensation for veterinary surgeons provided by the act of Congress approved on the said 3d day of March, 1863, known as the "enrollment act." But it being clear that he rendered valuable and efficient services during the nine months he acted under the authority of Colonel Gallagher, saving the government from great loss, and that the necessity existed for his employment, your

committee are of opinion that he should be paid a reasonable compensation therefor, and we are further of opinion that \$75 per month is fair and reasonable.

The committee therefore report the accompanying bill, appropriating the sum of \$675, and recommend its passage.

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ELIZA E. HEBERT.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. ROBERTSON, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 6759.]

The Committee on War Claims, to whom was referred the claim of Mrs. Eliza E. Hebert for stores and supplies taken for the use of the Army, &c., have carefully examined the memorial and proofs in the case, and make the following report:

This claim arises from the alleged taking of property by the Federal troops under command of Gen. Halbert E. Paine, in 1863, and has been before the Southern Claims Commission and Congress since the 24th of January, 1873, and is one which has created considerable notoriety in and out of Congress, and has been passed upon favorably by reports made in the Forty-third, Forty-fourth, Forty-fifth, and Forty-sixth Congresses.

In the Forty-third Congress, second session, in the Senate (see report 527), an adverse report was made, upon the ground that the order under which the property was taken, issued by General Paine, expressly required that the officers authorized to take property should give receipts for the same. In this case there are no receipts, and it is stated that none were given by the officers who took the property, and that inquiries addressed to the Quartermaster and Commissary Generals elicited replies that neither of the officers have charged themselves with supplies taken from Mrs. Hebert's plantation. And it is further stated that the testimony of these officers had not been secured, and that in the absence of their testimony that which was submitted was not of the most satisfactory character, being principally statements of servants, some of whom were on the plantation, whose estimates of quantity and value of the articles were not received with implicit confidence. That there was some other testimony, but not of that satisfactory character which would justify the committee in recommending the payment of so large a claim. That the articles were of the class for which claims should have been presented to the Commissioners of Claims appointed under the act of March 3, 1871.

Further, that petitioner stated that she was not aware until last year that such claims were paid, and therefore did not prepare her testimony and submit her case; and therefore the committee suggested that the agents furnished the Southern Claims Commission should make inquiry into the facts and circumstances alleged in the case, and the value of the stores taken. The suggestion made in this report was

adopted by the government, which resulted in an investigation by special detectives in 1875 and 1876, also in 1878, reference to which will be hereafter made.

A report was made in the Forty-fourth Congress (report 309) 24th of March, 1876, by the Committee on War Claims, through Mr. Conger, recommending that Mrs. Eliza E. Hebert should be paid the sum of \$21,090 in full for all her claims, and reported a bill for that amount, which passed the House at that session.

On the 14th of August, 1876, Mr. Wadleigh, from the Committee on Claims in the Senate, reported the bill which had passed the House, and made an elaborate report, recapitulating the evidence then before the committee, and concluded his report by stating that—

Your committee have had much doubt in reference to this claim, nor are their doubts entirely removed; yet, after a careful and thorough examination of the evidence, they have somewhat reluctantly come to the conclusion that it is sufficient to justify the passage of the bill. They therefore recommend its passage with the following amendment: Insert after the words "sixty-four," in the ninth line of the bill, the following proviso: "*Provided, however,* That neither the said Eliza E. Hebert, nor any one claiming under her, shall receive any part of said sum until the late husband, Jules J. Hebert, shall have executed and delivered to the United States a valid release of all his claims on account of said stores and supplies so taken.

This bill failed to pass the Senate for want of time.

In the second session of the Forty-fifth Congress, February 15, 1878, Mr. Caldwell, of the Committee on War Claims in the House, made a report (see report No. 216), concluding in the following words:

From the evidence your committee believe that the claimant, Mrs. Eliza E. Hebert, should be paid, as a full compensation for all her claims for the property and supplies taken and used as aforesaid, the sum of \$23,150, and herewith report a bill for that purpose and recommend its passage.

At the same session of the said Forty-fifth Congress, on March 27, 1878, Mr. Mitchell, from the Committee on Claims in the Senate, made a report (No. 203), in which he gives the substance of the evidence on file at that time, recommending the passage of a bill for the sum of \$23,150.

The next and last is an adverse report made by Mr. Bragg, from the Committee on War Claims in the House, in the second session of the Forty-sixth Congress (see report No. 936, April 8, 1880). This report refers in detail to the previous reports that had been made upon this claim, and further summarizes the evidence to show the contradiction in order to make this more patent, which we will not recapitulate here, but quote from the report to show the conclusion and reasons assigned for reporting adversely to the bill, as follows, to wit:

1st. That the claim is a fraudulent one.

2d. That the claim is barred for want of prosecution in the Commission of Claims if it were not fraudulent.

3d. That the assignment from Jules J. Hebert is invalid, and if a claim existed would not carry it to this claimant.

Your committee have gone over the whole evidence in this case, and have critically examined in detail every item of the account filed and the proof relative thereto. There are two accounts filed in the case, one before the Southern Claims Commission, on the 24th of January, 1873, and is as follows:

8,000 barrels corn, at \$1.50	\$12,000 00
500 cords of wood, at \$6	3,000 00
100 chickens, at \$1	100 00
200 turkeys, at \$2	400 00
30 hogs, at \$10	300 00
5 milch cows, at \$100	500 00

8 oxen, at \$50	\$400 00
5 horses, at \$160	800 00
4 mules, at \$125	500 00
Unknown quantity of lumber, consisting of hogsheads, staves, pickets, and posts, value estimated	5,000 00
Total.....	23,000 00

And the other taken from the report of Senator Mitchell, of Oregon, of the Committee on Claims in the Senate (see Senate report No. 203), which is as follows:

The claim in this case for property taken is as follows:

8,000 barrels of corn, at \$2.50	\$20,000
1,500 cords of wood, at \$4.66 $\frac{2}{3}$	7,000
For one lot of lumber, consisting of staves, heading, and pickets	10,000
For 1 pair of carriage horses	1,000
For 3 riding horses	900
For 4 mules, at \$300	1,200
For 30 hogs, at \$30	900
For 5 choice milch cows	375
For 20 head of beeves	500
For 1 lot of poultry	100
For fencing on plantation	6,000
Total.....	\$47,975

In comparing the two accounts as to the property, we find that there is no discrepancy between them as to the item of corn. As to the item of wood, the first account claims 500 cords and the second claims 1,500 cords. The first account claims for an "unknown quantity of lumber, consisting of staves, heading, and pickets," and does not include hogsheads and posts. In the first account the item for fencing is not included. In the first account claim is made for 100 chickens and 200 turkeys. In the second the claim is for one lot of poultry.

The proof shows that a quantity of hay and a number of sheep were also taken, but is not charged for in either account.

The number of mules, horses, hogs, and milch cows is the same in both accounts. The first account claims for 8 oxen; the second account claims for 20 head of beeves. So that the second account claims for 1,000 cords of wood more than is claimed in the first account, and claims 20 beeves instead of 8 oxen, and the item of fencing, not charged in the first account. It will therefore be seen that as to the charge for lumber the items for hogsheads and posts are charged for in the first account and are not charged for in the second account, but the item for heading is included in the second but is not in the first account. The discrepancy in the two accounts shows that she did not claim for property in the second account which she did claim for in the first account.

Now let us see, from a synopsis of the testimony before the committee, how far it sustains the claim for the items contained in those accounts.

1st, is the testimony of Louis Thomas, who states that Mrs. Hebert, whom he knew, had a plantation in the parish of Iberville, in Louisiana, near Indian Village. Does not know how many acres it contained.

About 180 acres were cultivated in corn. There was about 125 head of stock on said plantation in 1863, and about \$10,000 worth of lumber, including heading, staves, and pickets. I do not know what quantity of each. [Says that] General Paine's brigade was stationed at Indian Village, and Perkins's cavalry from Baton Rouge. Alcott, of Paine's brigade, and Captain Perkins, of Perkins's cavalry. Articles were Do not know the name of any other of the officers than General Paine and Major taken by these troops for the use of the Army, and I do not know whether any

vouchers were taken or not. Perkins's cavalry took five horses from the plantation. I do not know how much timber was on the place. Eight thousand barrels of corn and 1,500 cords of wood were taken by the troops—not at one time, but at intervals as the troops required. *I was present and saw the articles taken as stated by me.* I was raised and lived on the plantation in 1863. Paine's brigade took all the other live stock on the plantation excepting the horses—about 125 head in all—and drove them toward the Indian Village. Major Alcott returned the cows to Mrs. Hebert, and on the next day another officer of the same brigade (whose name I do not know) took them away again, stating that he had orders to do so; that if she wanted to get pay for the cows she would have to apply to the United States Government.

Whenever articles were taken by the troops they were always accompanied by officers.

2d. William Peterson says:

I am acquainted with Mrs. Hebert, and know that in 1863 she owned a plantation in the parish of Iberville, La. I do not know how many acres it contained, but there were about 180 acres improved. I do not know how many head of live stock, or how much lumber there was on the plantation, but there was a large quantity taken. The principal articles raised on the plantation were corn, wood, and lumber, which were sold to boats running between New Orleans and the Attakapas country. There were two companies which visited the plantation, and took live stock and produce therefrom; one company, known as Paine's brigade, stationed at Indian Village, one mile distant, and a company of cavalry from Baton Rouge, known as Perkins's cavalry, commanded by Captain Perkins, whom I knew, as also General Paine, of Paine's brigade. I knew no other officers. The articles were taken by the troops for the use of the Army, and no receipts to my knowledge were given to Mrs. Hebert for them. Perkins's cavalry took five horses from the plantation, and drove them to Baton Rouge. About 180 acres of said plantation were cultivated in corn, but I do not know how much timber there was on the place. Eight thousand barrels of corn and 1,500 cords of wood were taken at different times from said plantation by the troops, as they required the same. I lived on Mr. Dardenne's plantation, which adjoined Mrs. Hebert's place. I saw the articles taken, as I have stated.

3d. Louis Martin says:

I know Mrs. Eliza E. Hebert, and know that she owned in 1863 a large plantation, about one mile distant from Indian Village, in the parish of Iberville, Louisiana, in which parish the plantation was situated. About 180 acres were improved. There were about 125 head of stock, and about \$10,000 worth of lumber on the place at the time, including the lumber, staves, headings, and pickets, in what proportion I cannot state. There were articles taken from said plantation by two companies. One commanded by General Paine, whom I knew, known as Paine's brigade, stationed at Indian Village, and a cavalry company from Baton Rouge, known as Perkins's cavalry, commanded by Captain Perkins, whom I also knew.

The articles were taken by and for the use of the United States troops. Perkins's cavalry took five horses from the plantation, and drove them to Baton Rouge. One hundred and eighty acres on said plantation were cultivated in corn. Do not know how much timber there was on the place. Eight thousand barrels of corn and 1,500 cords of wood were taken, not at one time, but at intervals as the troops needed it. I was raised on the plantation, and was on the place in 1863, and saw the corn and wood taken. General Paine took milch cows, sheep, mules, hogs, corn, and wood.

4th. Sarah Martin testifies that she knew Mrs. Hebert in 1863; that she (Mrs. Hebert) owned a plantation in the parish of Iberville, near Indian Village.

Does not know how many acres in the place altogether, but knows that there were 180 acres improved. Knows that two companies visited the plantation. One was a brigade commanded by General Paine, the other was a company of cavalry commanded by Captain Perkins. Articles were taken from the plantation by the troops for their use as government troops. Five horses were taken from said plantation by Perkins's cavalry. Eight thousand barrels of corn and 1,500 cords of wood were taken from the plantation by the troops at intervals, as they required the same. I know the facts here stated by me, as I lived on the plantation as one of the house servants.

5th. Judge Edward Moore testifies that Mrs. Hebert had a plantation on Bayou Plaquemine, in the parish of Iberville, in 1863. Does not know how much stock there was on the plantation in 1863; but

I do know that she owned very fine horses. I myself offered her \$600 during the war for one of the carriage horses, which she refused. Her stock was all valuable.

6th. E. A. Teller testifies that—

Mrs. Hebert had a plantation in 1863 in Louisiana, situated on the Bayou Plaquemine, about 7 miles from the town of Plaquemine and 1 mile from the Indian Village. There were five horses, five or six mules, five cows, a large drove of sheep (number not known), hogs, beeves, ranging from four to seven years of age. I cannot state the exact number of head of stock on the place. There was a large quantity of lumber on the place at the time ready for shipment, about \$10,000 worth, but cannot say how much were staves, headings, or pickets. General Paine's brigade was stationed at Indian Village. General Paine arrived at the plantation one Saturday, and two or three days afterward he detailed two officers, Major Alcott and Captain Craig, to take all property needed for the troops. There were five horses taken from the place, and they were taken by a company of cavalry from Baton Rouge, known as Perkins's cavalry. There was a large quantity of timber on the place, but how much I cannot state. Two years' crop of corn and wood (quantity not known) was taken by United States troops. I know the facts stated by me, as I lived on the plantation during the time, and saw the depredations committed.

7th. Michael Fitzgerald states that he belonged to the Fourth Regiment of Wisconsin Volunteers, commanded by Col. Halbert E. Paine, afterward brigadier-general.

That the brigade was stationed at the Indian Village of Iberville, and was camped on a low, marshy strip of land. Knows that a large quantity of wood, pickets, and staves were used as fuel; that a large quantity of lumber was used for building quarters for the brigade, and that it was the property of Mrs. Hebert; says that he hauled this lumber himself; that he is now (in 1877) living 14 miles from the place; knows that said brigade used a great quantity of corn for itself and the Fifth Massachusetts Battery while camping there, and that a great quantity of corn was taken away when they broke said camp.

8th. Charles A. Bronell testifies that in 1863 he was second lieutenant in the One hundred and seventy-third New York Volunteers, and was in the brigade commanded by Col. H. E. Paine, in the spring of 1863, while at Indian Village, in camp near the plantation of Mrs. J. J. Hebert, and that while the command was there in camp that wood and lumber was taken from the plantation in indefinite quantities and used in camp—the wood for fire purposes, and the lumber for flooring tents, &c., of the camp, which was overflowed with water.

9th. Celestine Louis testifies that he was overseer on the plantation of Mr. and Mrs. Hebert:

They raised corn and made lumber and cord-wood for sale; they bought large quantities of corn from colored people. In 1862 Mr. Hebert rented land and raised corn on it. Had a large quantity of corn on hand. They had 8,000 barrels of corn in the corn cribs that was all taken by the Union force. I know how much the cribs held, and they were full when the troops came. We never used corn out of those cribs. They (the troops) came and got it as they wanted it, in their own wagons; they also took wood, as the back of their camp was not more than one-fourth of a mile from our woods, the only place they could get wood cut and dried. There was also a large quantity of lumber staves, headings, and pickets taken, and all the fencing. They took stock, such as horses, mules, hogs, milch cows, and so forth. They took 1,500 cords of wood, 8,000 barrels of corn, 1 pair of carriage horses, 3 riding horses, 4 mules, 30 hogs, 5 choice milch cows, 20 head of beeves, because I know they were on the place, and I saw them taken by Captain Perkins of the cavalry.

The balance of the property was taken by General Paine's brigade, and the witness evidently testifies to 30 barrels of corn to the acre—meaning produced.

10th. W. J. Woodruff testifies that—

He knows that General Paine's brigade was stationed at Indian Village in 1863, not more than a mile from Mrs. Hebert's plantation, and knows that General Paine's command built their quarters from the lumber on her plantation; also knows that all the wood on the place was used by the troops, as it was the only wood in the neighborhood. They also got from her place the corn and hay to feed the horses and stock. Also knows that Major Alcott came out and drove off the stock that was at Mr. Dardenne's place. Knows that Captain Perkins came to the place and drove off the horses.

Knows that wood was very valuable, also corn and hay, as there was very little in the country. Knows that they were there every day or so and hauled off wood to burn. Could not state the exact number of cords, but knows that she had a great quantity.

11th. John A. Dardenne testifies :

On the 25th of April, 1874, Mrs. Hebert resided on Bayou Plaquemine and owned a plantation on said Bayou Plaquemine. She resided on her plantation during the year 1863, and at that time General Paine arrived and had his camp at the Indian Village. I know, furthermore, that she had stock on my place, and it was taken by Major Alcott and Captain Craig; they were detailed by General Paine. Major Alcott, I think, was of the One hundred and thirty-third New York Regiment, and Captain Craig was commanding Company K, of the Fourth Wisconsin. Their business was raising corn and making lumber and wood; I cannot state the exact quantity taken. Wood was selling for \$7 per cord, and corn at \$1.75 and \$2 per bushel. I think they must have taken from them, as their plantation was the first to their camp.

12th. W. C. Smith testifies that—

During the years 1863 and 1864, I was a pilot on board of steamboats plying on Red River and Mississippi, passing through Bayou Plaquemine. During those years I was acquainted with the plantation of Mr. Hebert on Bayou Plaquemine, some 7 or 8 miles below the mouth of said bayou. Mr. Hebert during that time was selling wood, keeping it, together with split lumber, at all times on the banks of Bayou Plaquemine, he keeping it for sale when an opportunity presented itself, and was also raising corn on said plantation. I know that for wood, up to the year 1863, in October, I paid myself from \$6 to \$10 a cord. This was the usual price paid for wood at that time. During the time spoken of, the country was occupied by Federal forces and wood was very high. At the time I paid this price for it I was engaged in neither Confederate nor Federal forces, but was running a steamboat for private parties.

13th. Edward J. Gay testifies on the 10th of November, 1881, as follows:

I am acquainted with Mrs. Eliza E. Hebert and her husband, J. J. Hebert, formerly of the parish of Iberville, in this State, and also with the plantation formerly belonging to them in Bayou Plaquemine. I bought from them about the year 1868 the woodlands back of their place, consisting of 400 acres of as fine timbered lands as there is in this State; never saw any willows growing thereon. Those lands still belong to me, and are admitted to be the best body of cypress timber in the parish, which is noted for its cypress timber as well as other valuable varieties. The timber from the Hebert tract of land was a source of profit to the Hebert family for over forty years, long before Jules J. Hebert inherited the place, and still the timber on a large part of the tract had not been reached, but was guarded by the former owners as a fortune.

14th. Wm. J. Woodruff and Isadore Daigle testify as follows:

This is to certify that we, the undersigned, William J. Woodruff and Isadore Daigle, residents of the State of Louisiana, did on the 7th of April, 1880, measure the corn-houses on the plantation of Mrs. E. Hebert, in Bayou Plaquemine, in the Parish of Iberville, State of Louisiana, and found the following measurment to be true and correct:

One corn crib, 40 feet long by 20 feet wide, and 13 feet high.

One corn crib, 18 feet long by 25 feet wide, and 8 feet high.

One corn crib, 18 feet long by 15 feet wide, and 8 feet high.

15th. General Halbert E. Paine has also testified in this case—

That while at Indian Village, in Bayou Plaquemine, in the State of Louisiana, he was in command of the Second Brigade, Third Division, Nineteenth Army Corps; that his command was Eighth New Hampshire, One hundred and thirty-third New York, One hundred and seventy-fifth New York Regiments and a battery of artillery of the Regular Army, and during the time that they remained at Indian Village and Plaquemine and the intermediate posts, that there was no doubt that all the forage, fuel, corn, and wood used by his command was taken from the neighborhood; that while at the Indian Village he detailed Captains Craig, of the Fourth Wisconsin Regiment, and Alcott, of the One hundred and thirty-third New York Regiment, to seize necessary mules and horses, carts, wagons, forage, wood, and boats, for the quartermaster's department, and sugar, beef, and pork for the commissary department of his command; that he required them to give receipts in a prescribed form for all property so taken, and to turn the same over to Lieutenants Wooster and Brevorts, brigade quartermaster and commissary; that he required said Wooster and Brevorts to take up the property so turned over to them, and to dispose of it according to law;

that he required Captains Craig and Alcott to *inquire and report concerning the loyalty of all persons whose property they should seize*, and to avoid as far as they could the seizure of any property of *loyal* persons; that under this order so issued, said officers, with the assistance of non-commissioned officers and privates detailed for that duty, made numerous seizures of property, which was used by affiant's said command. That affiant has no particular recollection as to the amount of the several kinds of property seized as aforesaid.

16th. Maj. John H. Alcott, one of the officers detailed by General Paine to make the seizures, has made, first, a statement to the Southern Claims Commission, in a letter dated April 5, 1873, in reply to an inquiry from the clerk, Charles F. Benjamin, in which he said that the troops under the command of General Paine encamped on Bayou Plaquemine on or about January, 1863, and remained there some six or eight weeks; but in that letter states that while he was acquainted with Mrs. Hebert he did not recollect of her informing him at that time that she had sustained any losses by the troops while encamped there. He, however, afterward, on July 27, 1876, and March 12, 1879, in affidavits, corrects the statement in the letter above referred to, as to the taking of the property, as follows: In the affidavits of July 27, 1876, he states that in the year 1863, he was captain in the One hundred and thirty-third Regiment New York Volunteers, and was in the brigade commanded by Col. H. E. Paine, while in camp at Indian Village, near the plantation and home of Mrs. J. J. Hebert; and that as well as he can recollect there were quite a number of troops encamped there, in the spring of 1863, probably about 4,000, and that these troops were there for a considerable time, and while there cord-wood and lumber were taken from their plantation and premises, Mr. and Mrs. Hebert, by the Army for the use of the same, and the cord-wood was used by the Army for fuel, and was necessary; and the lumber was used for flooring in the tents, the ground being very damp from overflow, and was necessary; and the said wood and lumber was so taken and used by officers and soldiers with the knowledge and authority of the officers, and was necessary at the time. The wood was used in the camp-fires to cook and wash by, and was indispensable, as neither officers or soldiers could do without some fire.

In the second affidavit, made March 12, 1879, he says—

That while in camp at the Indian Village, Iberville Parish, La., near the plantation and house of Mr. and Mrs. Jules J. Hebert, he was detailed as forage master of the brigade at the time, his command comprising one captain besides himself and, as near as he can now recollect, some 20 enlisted men; that he visited the plantation of Mr. and Mrs. Hebert, and found thereon large quantities of cord-wood, lumber, corn, and other articles. Said wood, lumber, corn, &c., was seized by him and his command, stationed at Indian Village. Further, said wood, corn, lumber, &c., were taken to the camp in quantities as required, with the understanding that a receipt for the same should be given before the troops left. Said receipt was not given in consequence of the brigade having been suddenly ordered away. Further, that he was under the impression at the time he wrote the communication to the Southern Claims Commission, April 5, 1873, that it had reference to a plantation on the Mississippi River near Plaquemine, that he supposed belonged to Mrs. Hebert. Further, that the place where the property was seized was known as Jules J. Hebert's plantation; that the stock, comprising cattle, sheep, mules, and hogs, were taken from the plantation of John A. Dardenne, and were claimed by Mrs. Hebert as her property while on our way to camp. The cows were given up to her, but the remainder were refused and driven to camp. Further, that it has been represented to him that a certain Jules O. Neraux (who was at the time about sixteen years of age) has made a statement to the effect that "quantities of flour, pork, sugar, coffee, and so forth, were taken from the commissary stores by General Paine and his officers and given to Mr. and Mrs. Hebert in exchange for articles taken from them." Said statement deponent knows to be untrue, as no such transaction took place, or could have taken place without his knowledge. Further, that General Paine did make a present of a barrel of flour to Mr. and Mrs. Hebert, but it was not done in consideration of anything received or taken from them.

It will thus be seen by the testimony of the foregoing witnesses that her case is clearly established for the property charged for in her account, by witnesses whose testimony has not been impeached, nor has it in any manner been successfully contradicted by any testimony given in the case. The witnesses who testify as to the property and the taking of the same for the use of the Army all speak from personal knowledge, having been on the ground at the time the property was taken. This is not only true of the officers and soldiers who took the property, but is also true in regard to the citizens who have testified, both white and colored; they all speak from personal knowledge. It is a remarkable fact in this case that the testimony of all the citizen witnesses, both white and colored, is fully corroborated by the testimony of the officers and soldiers who took and used the property. The fact that there were no receipts given is fully explained by Major Alcott, the officer who was detailed to and who did take the property. He states:

Further, said wood, corn, lumber, &c., were taken to camp in quantities as required, with the understanding that receipts for the same should be given before the troops left. Said receipts were not given in consequence of the brigade being suddenly ordered away.

In the same affidavit, "that the stock, comprising cattle, sheep, mules, and hogs, was also taken."

It will be remembered, as your committee has heretofore stated, that the government, at the suggestion of the Committee on Claims in the Senate, who first examined this claim in the Forty-third Congress, investigated this claim through the agent of the Southern Claims Commission, Enos Richmond, who states that he made some investigation into the claim and reported it in December, 1876. This statement was made by Richmond in reply to a letter from Charles F. Benjamin, clerk of said commission, and is as follows:

[Copy respectfully furnished by the Commissioners of Claims to the honorable Senate Committee on Claims, by Chas. F. Benjamin, Clerk.]

JACKSON, MISS , April 8, 1878.

SIRS: I have just received a letter from Charles F. Benjamin inquiring about my report in the claim of Mrs. Eliza E. Hebert, of New Orleans, La.

In regard to the matter, will say that I made some investigations into the claim and reported it in December, 1876; but as the matter was pending before the Claims Committee in the Senate, I did not retain a copy of my report or of the evidence as I usually do in cases pending before other departments, hence can only give you my recollections of the report.

I reported the claimant as having been disloyal during the war, and gave aid to rebel scouts, &c., and that she did not own any of the property claimed, it all belonging to Jules J. Hebert, then her husband, and now divorced, and that *twenty-five hundred dollars* would fully cover all the property used by the Federal troops. The entire personal property of Jules J. Hebert did not exceed in value \$8,000 or \$10,000, and the Confederate scouts used the most of it and not the Federals. Jules J. Hebert was as disloyal as any of his neighbors, a fact well known in Bayou Plaquemine, La. Mr. Hebert admitted that Mrs. Hebert did not own any of the property in the claim, nor had she any community property under the law of Louisiana.

My report was based upon information received from S. M. Eaton, M. P. Williams, T. W. Colwell, William White, and others who lived near the claimant during the war. Mrs. Eliza E. Hebert, claimant, is the one who tried to persuade me to destroy the testimony in the claim of the estate of Isadore Daigle, No. 21683, a claim in which she was interested. I am satisfied that her claim is a fraud, both in regard to the property and loyalty, from the evidence I received in the matter while in Louisiana.

Very respectfully,

ENOS RICHMOND,
Special Agent.

Hon. COMMISSIONERS OF CLAIMS,
Washington, D. C.

It will be seen by this letter that Richmond states that his information was obtained from S. M. Eaton, M. P. Williams, T. W. Colwell, William White, and others, who lived near the claimant during the war. Three out of four of these witnesses named, to wit, William White, T. M. Colwell, and S. M. Eaton, swear that they knew nothing of the actions of Mrs. Hebert during the war, and that they knew nothing of Mr. Richmond as representing the government in the claim of Mr. Hebert. Mr. Colwell says, under oath, that—

I positively never gave my testimony to any United States agent in your behalf, or against you or your husband, as I have never been acquainted with either of you, and therefore could not give any such testimony as you have been informed that I had given.

These two gentlemen were well-known planters residing at that time in the parish of West Baton Rouge, distant from 15 to 20 miles from the Hebert plantation. The other, Mr. S. M. Eaton, swears that he had no knowledge whatever of claimant or her husband, or of the loyalty of either; "that he never met or knew Mrs. Hebert before this day." In view of the foregoing sworn statements of the parties from whom Richmond says he obtained the information upon which he based his report, your committee can attach no importance to the statements of Mr. Richmond in his report.

The government also made an investigation in regard to this claim in 1878, under the direction of the Chief of the Secret Service of the United States. This investigation was conducted by Azariah F. Wild, special operative of the New Orleans district. It appears from the report of Mr. Wild that this report was based on information obtained from John A. Dardenne, Jules O. Neraux, and James Dwyer. Dardenne and Neraux made affidavits and Dwyer made a statement not sworn to. This Mr. John A. Dardenne is the same Dardenne whose affidavit appears in favor of Mrs. Hebert's claim, and was made on the 25th day of April, A. D. 1874, heretofore set out in substance, and numbered No. 11, in which he states that Major Alcott took stock from his place belonging to Mrs. Hebert. In the affidavit made at the instance of Mr. Wild, he says, "that, being shown the list of the stock claimed as having been taken by the Federal troops under General Paine, he considered the same erroneous and in excess of the amounts taken." But he does not give any opinion or estimate of the amount taken, and evidently did not know, or he certainly would have stated it if he had known the fact, as the detective must have sought for that information. Your committee do not wish to be understood that they would not give proper credit to the statements of Mr. Dardenne, so far as his knowledge extended, but it is evident from his statement that he had no definite knowledge of the quantity of property taken.

Jules O. Neraux, who makes the other affidavit, is flatly and unequivocally contradicted by Major Alcott, the officer who took most of the property, and who gives a clear and plain statement of the whole transaction, so far as the facts testified to by Neraux are concerned, as well as all of the other witnesses who testify under oath on the same points. Mr. Dwyer's statement is not under oath, and beyond this he is contradicted by all the other witnesses who testify upon the same points, and notably by Dardenne, Smith, Woodruff, Daigle, Adamise Alexander, Ursin Le Blanc, and Edward J. Gay.

By a careful examination of the report of this detective, Wild, it will be seen that he has failed to find any evidence against the claim of Mrs. Hebert, either as to the amount of property charged for, its value, or the loyalty of either of the parties. He only produces the affidavits of

two persons, Dardenne and Neraux, the former having very little knowledge on the subject, save what he had before testified to, and the latter being, as we have before stated, fully contradicted by Major Alcott and the other witnesses, and the unsworn statement of Mr. Dwyer, which your committee cannot receive as controverting the testimony of the other witnesses who were under oath. This detective went into the neighborhood of this plantation and found three colored persons, whom he states would have corroborated the affidavit of Neraux, yet he did not even take their statements as he did that of Dwyer, nor does he pretend that he tried to get the affidavits of witnesses whom he knew had testified that they resided on the place at the time the property was taken, yet he closes his report by saying that—

Could I have the necessary time or a reasonable amount of money allowed me so I could take a notary public and go to the parties, I could get over one thousand affidavits stating the facts, showing Eliza E. Hebert's claim to be a base fraud in every item therein mentioned, and that in fact she and her husband are under many obligations to General Paine and his officers for the liberal manner in which they exchanged government commissary stores for a few head of sheep, and two cows, and five or six chickens.

Does not this detective pay a very high compliment to General Paine and his officers in making that statement?

The adverse witnesses in this case differ widely from the witnesses who have testified in favor of the claim, the latter maintaining that 180 acres were cultivated in corn, and the detective and his witness stating that not more than 40 acres were under cultivation, and one of the detective's witnesses stated that he thought that \$3,000 was all it was worth. In order to determine these disputed questions, your committee have had recourse to the original title-deeds of the property, and find upon examination of that instrument that the plantation consisted of two tracts of land; the front tract, fronting on Bayou Plaquemine, measuring 4 arpents, more or less, front on said bayou by 40 arpents, more or less, in depth, together with all buildings and improvements thereon; and the second was a tract of land adjoining and in rear of the first tract, containing 443.04 acres, and the whole containing over 640 acres of land, 400 acres of which, as testified to by Edward J. Gay, who purchased the property from J. J. Hebert, was timber, and the other 200 arpents, more or less, as stated in the title deed, contained the buildings and improvements thereon. An undivided interest in this property was acquired by Jules J. Hebert by inheritance from his brother, Treville Hebert, some time previous to June, 1859, and on the 20th of March, 1860, he acquired the title to the balance of said property, including two slaves, by purchase from his sister, for the sum and price of \$11,750.

This must settle the question as to the quantity of improved land and the value of the plantation, showing that the property was worth at the time of the purchase the sum of about \$22,000.

As to the value of the property claimed for, we have the testimony of Mr. Dardenne, who testifies in his first affidavit that corn was worth from \$1.75 to \$2 per bushel, and that wood was worth \$7 per cord, and that of W. C. Smith, who testifies that he was purchasing wood at that time and paying from \$6 to \$10 per cord. We, therefore, value the wood at \$6 per cord (the lowest price testified to) and the corn at \$1.75 per bushel, and allow the claimant for 10,000 bushels of corn, instead of 8,000 barrels as charged in the account, as one barrel of corn gathered from the field and stored in cribs would, upon a fair estimate, as your committee believe, make a bushel and a peck of shelled corn—the 8,000

barrels aggregating 10,000 bushels. There are four witnesses who testify that 1,500 cords of wood were taken, yet as none of them swear that they made an exact measurement of it, but evidently estimated it as near as they could, your committee think that perhaps they have made too liberal an estimate. They have, therefore, concluded to allow the claimant for 1,000 cords, which is the same quantity allowed for by the former committees who have reported on the claim, and it is reasonable to suppose that that amount of corn and wood would have been used by four thousand troops, infantry, cavalry, and artillery, camped in the immediate neighborhood in the months of January and February, and remaining for six or eight weeks, as Major Alcott testifies they did. The lumber is stated to have been worth \$10,000, and was used for flooring tents and building quarters for four thousand men, yet the quantity being arrived at by estimate instead of actual measurement, your committee have adopted the value placed upon it by the former committee, which was \$5,000.

Your committee think that the testimony of Judge Moore would justify an allowance of \$1,000 for the carriage horses. For the three riding horses, \$150 each, making \$450; for four mules, \$150 each, \$600; for thirty hogs, \$10 each, \$300; for five milch cows, \$50 each, \$250; for poultry, \$100; for twenty beeves, \$25 each, \$500; aggregating the sum of \$31,700, which amount your committee estimate only as a basis for arriving at a just conclusion as to what would be properly chargeable to the United States Government.

The fencing around the plantation was also taken and used, as is established by the evidence, for which the sum of \$6,000 is charged; but the quantity, kind, and value of the fencing is not stated. Your committee are therefore unable to come to any conclusion as to the amount which ought to be allowed for this item.

It will thus be seen from the testimony of the witnesses, both as to the quantity and value of the property, that the charge made in Mr. Bragg's adverse report, that the claim was a fraud, has no foundation in fact. Then, as to the loyalty of the claimant, that branch of the case is established beyond cavil by the testimony of such witnesses as General Sheldon, now Governor of New Mexico; A. H. Weaver, commander United States Navy; General Hurlburt, N. P. Banks, Thomas J. Durant, E. D. Townsend, Adjutant-General of the Army; Judge Rufus K. Howell, formerly of supreme court of Louisiana; Edward J. Gay and C. Dillingham, naval officers; Louis A. Wiltz, mayor of the city of New Orleans and afterward governor of the State of Louisiana, P. G. S. Deslonde, former secretary of the State of Louisiana; Governor William Pitt Kellogg, now United States Senator; Judge Don A. Pardee, United States circuit judge, and other prominent citizens, and no adverse testimony from any witness has been submitted to your committee.

It has been urged against this claim that it was not prosecuted before the Southern Claims Commission and is therefore barred. It appears that Mrs. Hebert, on the 24th of January, 1873, filed a petition in the Southern Claims Commission for what she thought to be one-half of the value of the property taken by the government, as appears from her statement. After having filed this petition the fact became known to the clerk of the commission, from the statements of Mrs. Hebert, that she had a husband living from whom she had been divorced, whereupon the clerk advised her that she had no standing before the commission, as the claim in legal contemplation belonged to her husband. It should be here stated that at that time Mrs. Hebert had no legal adviser; she therefore returned to her home to endeavor to procure an assignment of

the claim from her late husband, but did not succeed in accomplishing this until March 27, 1874, when she returned and found that the time for filing claims before the Southern Claims Commission had expired, and she then presented her petition to Congress, with the results above stated. This your committee is of opinion fully answers any objection that may have been raised against the claim on that ground, especially as no less than four committees of Congress have taken jurisdiction of the claim, and favorably reported upon it under the existing facts, and it passed the House once without objection, after a full consideration of that question. This we think is sufficient, so far as Mrs. Hebert is concerned, and fully excuses any apparent laches on her part.

Now, as to her husband. The reason assigned in the testimony of Mrs. Hebert, the petitioner, why the claim was not filed by her husband before the Southern Claims Commission within the time, in addition to the fact already stated, that he was very dissipated, is that he had been informed that the officers, General Paine, Major Alcott, and Captain Perkins, from whom he could gain proof, were killed at the battle of Port Hudson. It is further stated that Captain Perkins was killed at that battle; that General Paine, although not killed, did lose his leg in that battle, and lay as dead on the field for several hours, giving credit, as it is stated, to the report that he was dead; and the petitioner did not know the fact to be otherwise until she reached Washington and met General Paine here, who informed her of these facts. Mr. Jules Hebert makes affidavit, stating the same reasons in detail. It has been further claimed by Mr. Bragg, in a former report from this committee, that the assignment from Jules J. Hebert to Mrs. Eliza E. Hebert, the claimant, "is invalid, and if a claim existed would not carry it to this claimant." To support this proposition Mr. Bragg relies upon the act of Congress, to be found on page 107, vol. 10 U. S. Stats. at Large, which is as follows:

That all transfers and assignments hereafter made of any claim upon the United States, or any part or share thereof or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment for any such claim, or any part or share thereof, shall be absolutely null and void, unless the same shall be freely made and executed in the presence of at least two attesting witnesses, after the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof.

It is apparent to your committee that this act was not intended to meet any such case as this, but an entirely different class of cases. This act was passed to protect claimants against unscrupulous agents and other persons, who, from their superior knowledge of the status of claims pending before the various departments of the government, often took advantage of the ignorance of the claimants and purchased their claims for a trifling sum, in many cases on the eve of their payment. Thus all transfers and assignments were made void unless made and executed after the ascertainment of the amount, and the issuing of the warrant therefor; and under this law, all drafts for the payment of claims are made payable to the order of the claimant, and a power of attorney to collect the money must correctly describe the draft, giving amount, dates, &c., so that claimant cannot be deceived as to the amount due him as determined by the accounting officers. This your committee understand to be the object and purpose of this law, and are clearly of opinion that it can have no application to the case under consideration; but were Mr. Bragg correct in his application of the law, it could only apply to one-half of the claim, for the reason that Mrs. Hebert was the absolute owner of one undivided half of the claim, as

will be seen by what follows. It is shown by the evidence in this case that the property taken was on the plantation of Jules J. Hebert, the husband, and that the whole of the property was what was known under the laws of Louisiana as "movable or personal property," and that it was either the separate property of the husband or wife, or belonged to the community of acquests and gains existing between the husband and wife, as it is shown that the title to the real estate was in the husband, and therefore his separate property. The movable property being in the possession of and administered by him, the law presumes it to be community property. The rents, revenues, and profits arising from the separate property of the husband, as well as all property accumulated by the joint efforts of the husband and wife during marriage, are common effects or gains, which compose the partnership or community, and are divided into two equal proportions between the husband and wife at the dissolution of the marriage, whether by death or decree of divorce. The decree of divorce dissolving the marriage fixes the rights of the parties, and the wife becomes the absolute owner of the one-half of the community property, so that Mrs. Hebert was as much the real owner of the one-half of this claim as the husband was of the other half, and the assignment of the husband to her was an acknowledgment of her absolute right to one-half of the property and a legal transfer of the other half, and the act of assignment effected the partition between them.

The statement of Mr. Bragg, in his report, that—

she entered into a conspiracy with her late husband, who, so far as the government and its officers knew, had never pretended to have any claim, and took an assignment from him, and antedated it January 9, 1874, so that it would appear to have been in her possession at a time prior to the report of the Senate committee, February 1, 1875, and prior to her filing and swearing to her claim before the Senate, March 10, 1874—is clearly erroneous, and not supported by any evidence, but, on the contrary, is most emphatically contradicted by the testimony of Ewing C. Ketchum, who presented the instrument to Jules J. Hebert and saw him affix his signature to it, and Thomas Sewel, W. J. Woodruff, and Chas. Merchand, who all swear that they saw the said assignment in the possession of Mrs. Eliza Hebert in 1874. In justice to Mr. Bragg, however, it is proper to say that this testimony has been given since his report was made. The affidavits of Messrs. Sewel and Merchand were sworn to and subscribed before A. Barnett, notary public, on the 15th day of November, 1881, in New Orleans, La., and that of Ewing C. Ketchum before Frank Olear, notary public, in the city of Saint Louis, on the 14th day of December, 1881, besides the fact that the instrument itself bears indubitable evidence of its genuineness. It is an act under private signature, signed by Mrs. Hebert in the presence of two witnesses—viz, M. L. Ainsworth and M. C. Dunn—and was by her acknowledged on the same day, to wit, the 9th day of January, 1874, and before M. L. Ainsworth, notary public, with his official seal attached, in New Orleans, La. The signature of Jules J. Hebert was appended to the assignment, at Saint Louis, in the State of Missouri, on the 27th day of March, 1874, in the presence of, and acknowledged before, John T. Orouck, notary public, with his official seal attached. This act then became a public act, as to Mrs. Eliza E. Hebert, on the 9th day of January, 1874, and as to Jules J. Hebert, on the 27th day of March, 1874. It will thus be seen that the execution of this instrument by the respective parties was an act performed at different dates, one on the 9th day of January and the other on the 27th of March, 1874, and acknowledged before officials some twelve hundred miles apart, which of itself

precludes the idea of there being any collusion or conspiracy in the matter.

Mr. Bragg further states in his report that "in January, 1873, claimant files a petition in the Claims Commission, making a claim for \$23,000, and alleging that she is the assignee of Jules J. Hebert. This claim and assignment, *he says*, she swears to be true"; and upon that statement bases a charge of false swearing, fraud, and conspiracy, "to accomplish a raid upon the Treasury."

Your committee have examined the original petition filed by Mrs. Hebert and referred to by Mr. Bragg, and find that no such statement, as to the assignment, is contained in that petition, and for greater certainty on that point we annex hereto the original petition (marked Exhibit A) and make it a part of this report. We also annex the paper purporting to be a copy furnished by the Southern Claims Commission, which is evidently the paper upon which Mr. Bragg made this statement of false swearing, fraud, and conspiracy, "to accomplish a raid upon the Treasury," and mark it B for more particular reference. It is not believed by your committee that Mr. Bragg had the original petition before him when he made this statement, as it was not found among the papers of the War Claims Committee, but was found by your committee in the files-room of the House, among the papers of the Southern Claims Commission.

After a full and careful examination of the evidence in the case, your committee are clearly of the opinion that Mrs. Eliza E. Hebert should be paid the sum of \$21,090, in full satisfaction of all her claims for the property and supplies taken and used as aforesaid, and herewith report a bill for that purpose, and recommend its passage.

EXHIBIT A.

Copy furnished Committee of War Claims April 11, 1874, where a claim is also pending for same property.

PETITION.

To the honorable Commissioners of Claims under the act of Congress of March 3, 1871, Washington, D. C. :

The petition of Eliza E. Hebert respectfully represents—

That she is a citizen of the United States and resides at present at or near New Orleans, Orleans Parish, La., and that she resided when this claim accrued at or near Bayou Plaquemine, Iberville Parish, La.

That she has a claim against the United States for property taken for the use of the Army of the United States during the late rebellion at (or near) Bayou Plaquemine, Iberville Parish, La.

That the said claim, stated by items, and excluding any and all items of damage, destruction, and loss (and not use) of property; of unauthorized or unnecessary depredations by troops and other persons upon property, or of rent or compensation for the use or occupation of buildings, grounds, or other real estate, is as follows:

No. of item.	Quantities and articles.	Value.
1	8,000 barrels corn, at \$1.50	\$12, 000
2	500 cords of wood, at \$6	3, 000
3	100 chickens, at \$1	100
4	200 turkeys, at \$2	400
5	30 hogs, at \$10	300
6	5 milch cows, at \$100	500
7	8 oxen, at \$50	400
8	5 horses, at \$160	800
9	4 mules, at \$125	500
10	Unknown quantity of lumber, consisting of hogshead staves, pickets, and posts, value estimated	5, 000

That the property was removed to Indian Village and Plaquemine, and used for or by the troops of General H. E. Paine's brigade. All this on or about the — day of —, in the year 186—.

That no vouchers, receipts, or other writings were given for the property.

That your petitioner verily believes that the property described was taken under the following circumstances, or one or more of such circumstances, viz:

1. For the actual use of the Army, and *not* for the mere gratification of individual officers or soldiers already provided by the government with such articles as were necessary or proper for them to have.

2. In consequence of the failure of the troops of the United States to receive from the government in the customary manner, or to have in their possession at the time, the articles and supplies necessary for them or which they were entitled to receive and have.

3. In consequence of some necessity for the articles taken, or similar articles; which necessity justified the officers or soldiers taking them.

4. For some purpose so necessary, useful, beneficial or justifiable as to warrant or require the government to pay for it.

5. Under the order or authority of some officer, or other person connected with the Army, whose rank, situation, duties, or other circumstances at the time authorized, empowered, or justified him in taking or receiving it, or ordering it to be taken or received.

That your petitioner and her husband, Jules J. Hebert, of Iberville Parish, Louisiana, were the original owners of said claim, and that your petitioner is the present owner of the same.

That your petitioner and her husband remained loyally adherent to the cause and the Government of the United States during the war, and were so loyal before and at the time of the taking of the property for which this claim is made, and she solemnly declares that, from the beginning of hostilities against the United States to the end thereof, their sympathies were constantly with the cause of the United States; that they never, of their own free will and accord, did anything, or offered, or [original torn at this point.]

That said claim has not before been presented to any officer or department of the government for payment, nor has any payment been made by the government on account of such claim.

ELIZA E. HEBERT.

DISTRICT OF COLUMBIA, *County of Washington*:

Eliza E. Hebert, of Orleans Parish, La., being duly sworn, deposes and says: That she is the petitioner named in the foregoing petition, and who signed the same; that the matters therein stated are true, of the deponent's own knowledge, except as to those matters which are stated on information and belief, and as to those matters she believes them to be true; and deponent further says that her husband did not voluntarily serve in the Confederate Army or Navy, either as an officer, soldier, or sailor, or in any other capacity, at any time during the late rebellion; that they never voluntarily furnished any stores, supplies, or other material aid to said Confederate Army or Navy, or to the Confederate Government, or to any officer, department, or adherent of the same in support thereof, and that they never voluntarily accepted or exercised the functions of any office whatsoever under, or yielded voluntary support to, the said Confederate Government.

ELIZA E. HEBERT.

Sworn and subscribed in my presence the 24th day of January, 1873.

A. O. ALDIS. [L. S.]

Names and residences of witnesses who will be relied upon to prove loyalty: Hon. B. F. Flanders, New Orleans; Hon. Michael Hahn, New Orleans; Edward J. Gay, merchant and planter, New Orleans; Hon. E. H. Durell, U. S. judge, New Orleans; Christian Coselius, lawyer and judge, New Orleans; George W. Brott, New Orleans.

Names and residences of witnesses who will be relied upon to prove the other facts alleged in the foregoing petition: [Original torn at this point.]

EXHIBIT B.

Copy of the petition of Mrs. Eliza E. Hebert, filed with Southern Claims Commission January 24, 1874.

PETITION.

To the honorable Commissioners of Claims, under the act of Congress of March 3, 1871, Washington, D. C.

The petition of Eliza E. Hebert respectfully represents:

That she is a citizen of the United States, and resides at present at or near New Orleans, Orleans parish, La.

That she has a claim against the United States for property taken for the use of the United States Army, as follows:

1. 8,000 barrels corn, at \$1.50	\$12,000 00
2. 500 cords of wood, at \$6	3,000 00
3. 100 chickens, at \$1	100 00
4. 200 turkeys, at \$2	400 00
5. 30 hogs, at \$10	300 00
6. 5 milch cows, at \$100	500 00
7. 8 oxen, at \$50	400 00
8. 5 horses, at \$160	800 00
9. 4 mules, at \$125	500 00
10. Unknown quantity of lumber, consisting of hogshead staves, pickets, and posts, value estimated	5,000 00
Total value of property	23,000 00

That all the items in the above schedule were of the full value therein set forth, and were ——— your petitioner for the use of and were used by the United States Army, and was removed to Indian Village and Plaquemine, and used for and by the troops of General H. E. Paine's brigade.

That no voucher, receipt, or other writing was given therefor.

That your petitioner and her husband, Jules J. Hebert, resided at the time said claim accrued at Iberville Parish, Louisiana.

That your petitioner and her husband, Jules J. Hebert, were the original owners of said claim, and that your petitioner is the present owner of the same, she having an assignment of her husband's interest.

That your petitioner and her husband remained loyal adherents to the cause and Government of the United States during the war, and so loyal before and at the time of the taking of the property for which this claim is made.

That said claim has never before been presented.

DISTRICT OF COLUMBIA, *County of Washington*, ss:

Eliza E. Hebert, being duly sworn, deposes and says that she is the petitioner named in the foregoing petition, and who signed the same; that the matters therein stated are true, of the deponent's own knowledge, except as to those matters which are stated on information and belief, and as to those matters she believes them to be true; and deponent further says that she did not voluntarily serve in the Confederate Army or Navy, either as an officer, soldier, or sailor, or in any other capacity, at any time during the late rebellion; that she never voluntarily furnished any stores, supplies, or other material aid to said Confederate army or navy, or to the Confederate government, or to any officer, department, or adherent of the same in support thereof, and that she never voluntarily accepted or exercised the functions of any office whatsoever under, or yielded voluntary support to, the said Confederate government.

ELIZA E. HEBERT.

Sworn and subscribed in my presence the 24th day of January, 1873.

[L. S.]

A. O. ALDIS.

Names and residences of witnesses who will be relied upon to prove loyalty: Hon. B. F. Flanders, New Orleans, La.; Hon. Michael Hahn, New Orleans, La.; Edw'd J. Gay, merchant and planter, New Orleans, La.; Hon. E. H. Durell, United States judge, New Orleans, La.; Christian Coselius, lawyer and judge, New Orleans, La.; George W. Boott, New Orleans, La.

Names and residences of witnesses who will be relied upon to prove the other facts alleged in the foregoing petition: Celestine Martin, col'd. New Orleans, La.; Sarah Martin, sold, New Orleans, La.; Achille Lewis, sold, New Orleans, La.; Lizzie Lewis, col'd, Baton Rouge.

Post-office address of claimant, New Orleans, La., 15 Dauphin street.

MONEY DUE THE STATE OF GEORGIA.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. ROBERTSON, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 125.]

The Committee on War Claims, to whom was referred the bill (H. R. 125) to pay to the State of Georgia \$27,175.50, money advanced by said State for the defense of her frontiers against the Indians, &c., submit the following report:

The facts out of which the claim for relief arises will be found stated in Senate report of the Committee on Claims, No. 148, first session Forty-seventh Congress, a copy of which is hereto appended.

Your committee adopt the said report as their own, and report back the bill with the recommendation that the same be amended by inserting at the end of line 11 the following: *Provided*, That if, upon a full and exhaustive investigation, it shall appear that any sum is due to the said State, the Secretary of the Treasury shall first deduct from said sum the unpaid amount of the direct tax which, under the act of August 5, 1861, and its supplements, was apportioned to the State of Georgia.

[S. Report No. 148, 47th Congress.]

FEBRUARY 8, 1882.—Ordered to be printed.

Mr. HOAR, from the Committee on Claims, submitted the following report (to accompany bill S. 270).

The Committee on Claims, to whom was referred the bill (S. 270) to repay to the State of Georgia \$27,175.50, money advanced by said State for the defense of her frontier against the Indians, from 1795 to 1818, and not heretofore repaid, have considered the same, and respectfully report:

That a bill like this was introduced in the last Congress, and referred by the Senate to this committee.

Mr. Hereford made the following report by authority of the committee:

The Committee on Claims, to whom was referred the bill to repay to the State of Georgia \$27,175.50 for money advanced by said State for the defense of her frontiers against the Indians, from 1795 to 1818, and not heretofore repaid, have had the same under consideration, and make the following report:

The State of Georgia presents an account for money expended in the defense of her frontiers against hostile Indians, as follows:

In the years 1795–1800.....	\$4,607 00
In the years 1812–1814.....	16,801 38
In the years 1817–1818.....	5,766 04

Original vouchers on which Georgia disbursed said sums, except for the first item of \$4,607, were examined by the committee and compared with the account certified to have been paid by the officials of the State of Georgia, stating the number of the warrant, name of the officer, the number of the voucher, page in the treasurer's book, and the amount paid; and the account corresponded with the vouchers in every particular, with the before-mentioned exception. From these proofs the committee find due and unpaid the State of Georgia the sum of \$22,567.42.

The bill was referred to the Secretary of the Treasury, asking whether any of the items contained therein have been paid by any special or general act of Congress, or by any of the proper departments, and if there is any reason why they should not be paid, and the following reply was received, which is made a part of this report:

TREASURY DEPARTMENT, *December 15, 1880.*

SIR: In reply to your communication of the 11th instant, inclosing bill for the relief of the State of Georgia, and asking to be informed whether any of the items contained therein have been paid by any special or general act of Congress, or by any of the proper departments, and if there is any reason why they should not be paid, I have the honor to inform you that the Second Auditor of the Treasury reports that the claim of the State of Georgia for repayment of \$27,175.50 advanced for the defense of her frontier against Indians from 1795 to 1818 has not been paid through his office; that the greater portion of the time covered by the account is prior to the organization of his office (March 3, 1817), and that the records thereof do not afford any information bearing upon the validity of the claim. Further, that the Third Auditor reports that the records of his office do not show that the said claim has been paid, or the claim been filed since it was withdrawn March 4, 1858, and invites attention to the letter of his office of January 22, 1880, in relation to the subject, a copy of which is inclosed herewith.

The papers accompanying your letter are returned herein.

Very respectfully,

JOHN SHERMAN,
Secretary.

HON. FRANK HEREFORD,
United States Senate.

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,
Washington, D. C., January 22, 1880.

SIR: I have the honor to acknowledge the receipt of your letter of the 17th instant, requesting information relative to the claim of the State of Georgia for militia expenses from December, 1795, to August, 1827.

In reply I have to state that it appears from the records of this office that William M. Varnum, esq., as agent for the State of Georgia, filed in this office a claim for payment to certain commissioned officers from 1795 to 1818, on the 16th of February, 1858 (No. 2862). On the 23d of February, 1858, the agent withdrew vouchers numbered 43, 64, 65, 66, 67, 68, 69, 70, 71, 72, and 75, for payments of services since 1815, for reference to the Second Auditor. These vouchers (pay-rolls) amounted to \$10,718.26.

The whole amount filed February 16, 1858, was \$49,056.39, and the balance of the claim was withdrawn from this office March 4, 1858, by said agent, as will more fully be seen by reference to the letter of this office to him of that date herewith inclosed, marked Exhibit A. There is no evidence on file in this office that the State of Georgia has since that time presented these claims, for settlement, to the accounting officers of the Treasury.

The claims withdrawn by the agent for reference to the Second Auditor have not been returned to this office, and this office has no official knowledge of the action of the Second Auditor thereon. The certified copy of abstract and letter of Hon. R. J. Atkinson, dated March 4, 1858 (marked Exhibit A), herewith returned.

I am, very respectfully,

E. W. KEIGHTLEY,
Auditor.

W. O. TUGGLE,
Agent for the State of Georgia, Washington, D. C.

That the protection of the several States and the citizens thereof from Indian hostilities is, and has been from the organization of the Federal government, a duty and a charge incumbent on the United States, and when, in the absence of such protection, the State themselves have made necessary expenditures for this purpose they should be reimbursed, are principles well founded in law and justice and fully sanctioned by an unbroken line of precedents.

As the original vouchers for the expenditure of \$4,607, in the years 1795 to 1800 inclusive, were not furnished to the committee, said sum is not allowed.

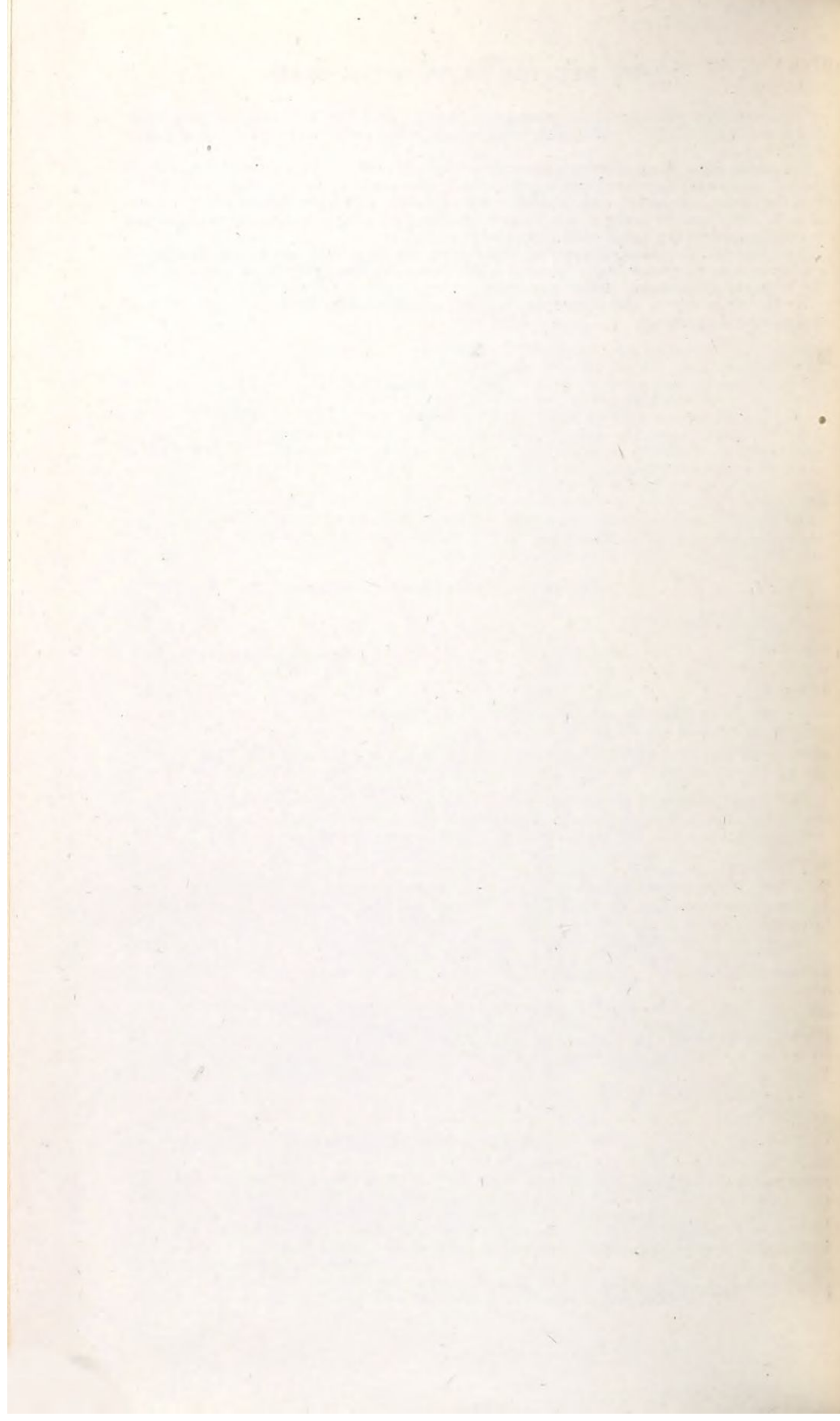
The committee recommend the passage of the bill with the following amendments : Strike out "\$27,175.50" and insert "\$22,567.42," also strike out "1795" and insert "1812."

It appears from the papers accompanying the bill that the original vouchers were mislaid, and only discovered during the administration of Gov. J. E. Brown, in 1857 ; that they were forwarded and presented for payment, and were pending before Congress in 1861, and by order of the Senate in January, 1879, the vouchers and papers were delivered to the agent of the State of Georgia.

We adopt Mr. Hereford's statement of the facts, but for greater security in the case of a claim so old, we prefer to recommend a bill providing that the claim be audited in the Treasury Department before payment.

We therefore report the accompanying bill as a substitute for Senate bill 270 and recommend its passage.

○



MARY A. RIPLEY.

JULY 15, 1882.—Laid on the table and ordered to be printed.

Mr. HOLMAN, from the Committee on War Claims, submitted the following

R E P O R T:

[To accompany bill H. R. 1187.]

The Committee on War Claims, to whom was referred the bill (H. R. 1187) for the relief of Mary A. Ripley, having had the same under consideration, submit the following report:

That the claimant represents, in her statement of the facts and circumstances upon which her claim is based, that she entered the service of the United States as "volunteer nurse," and had care of sick and wounded soldiers from some time in August, 1861, to the close of the war, in 1865, and that she expended considerable money for the benefit of soldiers while acting as a nurse in the service of the United States.

In the Forty-fifth Congress this claimant procured the introduction of a bill (H. R. 3499) to pay her the sum of \$1,200, expended by her in such service. At the present Congress the bill asks only \$720 for such service.

The statements are all of a vague and indefinite character. No vouchers or accounts of money expended are submitted with the papers.

While Mrs. Ripley submits many letters of a general character, commending her for her philanthropic services in the cause of humanity, she fails to present any facts upon which the committee are enabled to fix the compensation to which she would be entitled under any existing laws or regulations.

During the war female nurses were authorized, in general or permanent hospitals, by section 6 of the act of August 3, 1861, and they were allowed 40 cents a day and one ration in kind, with no other allowances, except transportation in kind. They were paid by the Pay Department (see Army Regulations of 1863, page 363), and were required to receive their appointment from Miss D. L. Dix, who had an office in Washington.

No government in the world ever had more ample and expensive appliances for the care of its sick and wounded soldiers than that of the United States during the civil war; and in order to make its efforts in that direction systematic and effective Congress passed the act above referred to, and gave opportunity to all females who desired to alleviate the sufferings of our sick and wounded soldiers to do so, under the direction and control of Miss Dix. Many ladies, like Mrs. Ripley, preferred to act independently, and doubtless rendered valuable services; but, as they were of an irregular and unofficial character, it is impossible to place any estimate upon their value.

It is the opinion of the committee that to open the door of the Treasury to all the philanthropists who sympathized with and attended upon the sick and wounded of the late war would bankrupt the government, though the committee are impressed with the conviction that all persons who render service to the government under any law or regulation fixing the compensation for such service are entitled to compensation therefor.

The committee report adversely to the bill, and recommend it do lie upon the table.

○

WILLIAM R. GIBSON.

JULY 15, 1882.—Laid on the table and ordered to be printed.

Mr. HOLMAN, from the Committee on War Claims, submitted the following

REPORT:

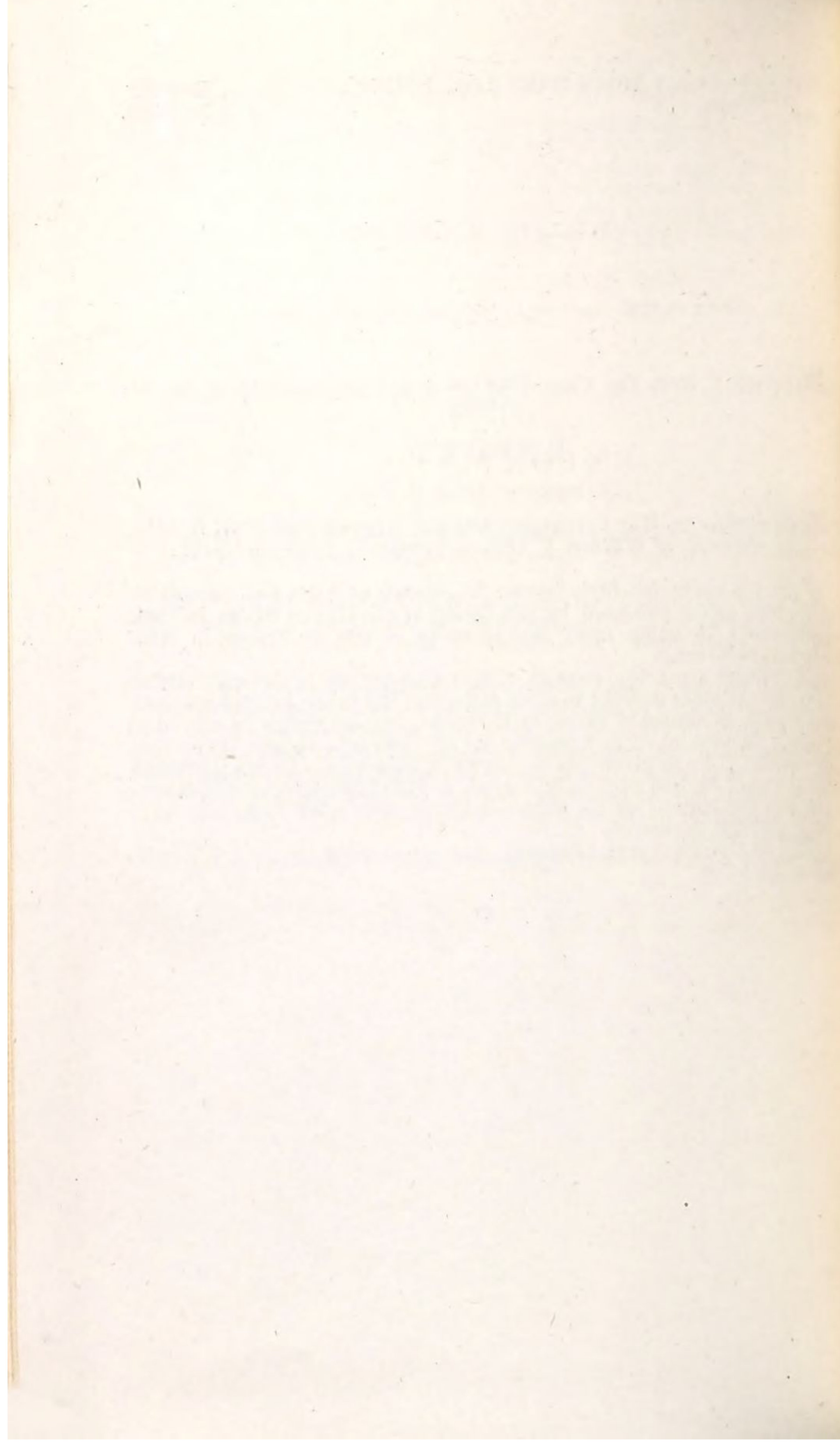
[To accompany bill H. R. 4419.]

The Committee on War Claims, to whom was referred the bill (H. R. 4419) for the relief of William R. Gibson, submit the following report:

This is a claim for fuel, forage, &c., stated at \$486, and alleged to have been taken and used by the troops of the United States in 1864, temporarily in camp upon the premises of the petitioner, in Hart County, Kentucky.

It appears from the records of the Quartermaster-General's Office that the claimant omitted to avail himself of the forum created for such claimants as matter of favor by Congress, and no excuse is offered to explain or account in any manner for his failure to appear before that tribunal. He was given his day in court, and by his laches permitted his claim, if he had any, to be barred, and has no right to complain of any one but himself for his failure to obtain such relief as he may have been entitled to receive.

The committee report adversely, and recommend that the bill do lie upon the table.



SAMUEL DYSON, ADMINISTRATOR, &c.

JULY 15, 1882.—Laid on the table and ordered to be printed.

Mr. HOLMAN, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 3676.]

The Committee on War Claims, to whom was referred the bill (H. R. 3676) for the relief of Samuel Dyson, administrator of the estate of Jesse Viers, deceased, submit the following report:

This claim is for wood, forage, and rent of property, alleged to have been taken and used by the Army of the United States, during the late war, from decedent's farm in Montgomery County, Maryland; claim stated at \$5,976.

An investigation of the proof submitted discloses the fact that this claim was, in 1873, presented to the Quartermaster-General for adjudication and settlement, and, on November 4, 1880, not allowed, that officer being unable to certify that he was convinced that the property had been actually received or taken for the use of and used by the Army.

Your committee assert, as a principle by which they will be governed, "When a cause has been fairly heard and determined in a forum having jurisdiction, they will not assume to sit in review upon such determination."

Your committee therefore report adversely to the bill, and recommend that it do lie upon the table.

NIMROD PORTER.

JULY 15, 1882.--Laid on the table and ordered to be printed.

Mr. HOLMAN, from the Committee on War Claims, submitted the following

REPORT:

The Committee on War Claims, to whom was referred the petition of Nimrod Porter, of Maury County, State of Tennessee, submit the following report:

That this claim is for the value of 21,600 railroad ties, at 60 cents each, amounting to \$12,960.

Claimant's petition sets forth that the property charged for was taken during the years 1864 and 1865 by J. M. Moore, contractor, and J. D. McBane, agent, protected by a military guard, from his land lying about three miles east of the town of Columbia, Tenn.; that the property was taken for the use of the military railroads; that a memorandum receipt was given therefor by J. D. McBane, agent, bearing date of May 10, 1865, but that no payment has been made or compensation received in any way or from any source whatever for the whole or any part of the claim.

The following is a copy of the receipt given for the property :

COLUMBIA, TENN., May 10, 1865.

Received from Nimrod Porter, timber; 21,600 cross-ties for use of the United States military railroads.

J. M. MOORE,
Government Contractor.
J. D. MCBANE,
Agent.

To prove his loyalty to the United States the claimant filed in the War Department several original copies of oaths of allegiance, taken by him at different times during the rebellion, one bearing date as early as August 18, 1862; safe-guards, including protection to person and property; permits to keep fire-arms and ammunition for the same; certificates from commissioners of registration entitling him to exercise the privilege of the elective franchise.

The claim, as above set forth, was referred to the chief quartermaster, Department of the Cumberland, for investigation as to its justness, &c., and was returned by him to the War Department, June 29, 1869, with report substantially as follows:

The ties were cut from a tract of land $3\frac{1}{2}$ miles from Columbia, Tenn. The timber belonged to claimant, and when taken was *in the tree*, and worth, in that shape, 25 cents per inch across the butt. The timber from which these ties were made was taken by J. M. Moore, a contractor, under his contract with the United States. So far as I understand the case, this claimant should look to Mr. J. M. Moore for compensation for this timber, and I am of opinion that he has no just claim against the United States, as

the government paid Moore for the ties. I learn that claimant knew at the time that he must look to Moore for pay for his timber, and did demand pay from him, but as claimant threw obstacles in Moore's way while he was cutting the timber, Moore would not pay him.

In November, 1872, the Quartermaster-General United States Army, rejected the claim for the reason that it was not proved as required by the act of July 4, 1864.

On August 27, 1873, the claim was sent to Col. James A. Ekin, chief quartermaster, Department of the South, for investigation, and was placed in the hands of an agent, who reported as follows:

The previous report made in the case June 29, 1869, is correct as far as information is given, with the exception of the price of standing timber, which is too high.

The committee, being specially requested, have examined all the evidence, and do not rest their finding simply upon the rule that a claim which has once been fairly adjudicated ought not to be reopened.

The contract between the government and Moore was for "cross-ties cut and delivered," not for "cutting cross-ties." The proof shows that the claimant recognized Moore & McBane's responsibility in the case by suing them. He brought suit at the May term of the circuit court of Maury County, Tennessee, in 1865, against J. M. Moore and J. D. McBane, government contractors, with whom claimant had a difficulty in regard to the cutting of the timber. The case was tried at the January term of the court, in 1866, and judgment was rendered in favor of claimant for \$13,475.40, with \$14.85 costs. *Fieri facias* was issued June 12, 1866, and the sheriff returned the execution with indorsement "no property found in my county to levy on and make this debt." The claimant, failing to make the money, he filed a claim against the government for more than four times the market price of the standing timber.

Claimant died March 31, 1872. His wife died many years ago. Mr. Porter left two sons, both of whom were volunteers in the rebel army.

The committee are of opinion that he has no claim against the United States; by his suit against Moore & McBane he has admitted that fact, for that proceeding shows that he looked to them for payment, and not to the government, until he failed to satisfy his judgment against them. Unless the government, took forcible possession of the timber (which nowhere appears, the guard, if furnished, being merely a protection against the rebels) it is not responsible to Mr. Porter for it.

Your committee adhere to their rule not to review the decision of any tribunal having jurisdiction of a claim when the parties have had a fair and impartial hearing, and in this case have only reviewed the facts to meet the alleged equities of the claimant.

The committee report adversely to the prayer of the memorial, and recommend it do lie upon the table.

STEPHEN H. MYERS.

JULY 15, 1882.—Laid on the table and ordered to be printed.

Mr. HOLMAN, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 1046.]

The Committee on War Claims, to whom was referred the bill (H. R. 1046) for the relief of Stephen H. Myers, submit the following report:

That this claim is for the value of the canal-boat Swan, alleged to have been lost while in the military service of the United States, in the month of August, 1862, amounting to \$1,300.

Claimant filed his claim before the accounting officers of the Treasury Department, and, after a due hearing, they disallowed the claim.

Your committee think the case comes clearly within the prohibitory rule 2, clause 2, and recommend the rejection of petitioner's claim.

○

THOMAS WORTHINGTON.

JULY 18, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HALL, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 6760.]

The Committee on War Claims, to whom was referred the petition of Thomas Worthington, submit the following report:

That the petitioner claims a balance of \$22,201, with interest on that sum since 1861, which he says is due him for furnishing water at Camp Dennison, near Cincinnati, from May 10 to June 26, 1861. He states his claim as follows, to wit:

2,172,000 gallons water, at 40 cents per 100 gallons.....	\$8, 688 00
30,000 gallons furnished a Michigan battery.....	120 00
increased expense of hauling 1,560,000 gallons water from above slaughter-house.....	14, 560 00
Increased expense of delivering because of failure of government as above stated.....	4, 404 00
For use and loss of machinery rendered useless or destroyed by troops....	1, 357 00
Expense occasioned by excluding water-carts from between sunset and sunrise.....	1, 059 00
Making.....	30, 179 00
Upon which he states that he had received up to 1869 the sum of.....	8, 238 00
Balance due.....	21, 941 00
To increased haul on 30,000 gallons for the Loomis battery.....	260 00
Aggregating.....	22, 201 00

It seems that Capt. John H. Dickerson, assistant quartermaster, United States Army, on the 4th day of May, 1861, published in the Cincinnati Commercial a notice inviting proposals for furnishing water for Camp Dennison, as follows:

ARMY SUPPLIES.

Proposals will be received till 12 o'clock m., on the 6th instant, for supplying the troops at Camp Dennison with water. The water will be hauled from the river near by, or from wells in the vicinity, and placed in casks provided by the government, on the regimental grounds of each regiment. The strength of the command will be from 12,000 to 18,000 men, and about one gallon per man per day will be required. The contractor must be prepared at all times to supply the demand, not exceeding one gallon and a half per day per man. Each company must be supplied at daylight in the morning with 60 gallons, and from that time till sunset the casks must be filled as fast as emptied. The bids will state the price per gallon for delivery.

The contract will commence on the 10th instant and continue in force sixty days unless sooner annulled.

The undersigned reserves the right to cancel the contract after it has been in opera-

tion thirty days by giving the contractor ten days' notice. The bids will be directed to me at the Burnet House, and marked "Bids for water."

May 1, 1861.

JOHN H. DICKERSON,
Captain and Assistant Quartermaster.

In compliance with the terms of this circular the claimant, Thomas Worthington, agreed to furnish the water required for 15 cents per 100 gallons, and commenced the supply May 10, 1861.

The amount stipulated for, one and one-half gallons per man per day, being found entirely inadequate, a second bargain was made between the proper officer and Worthington, by which he was to receive 40 cents per 100 gallons for additional amount of one gallon per man from June 10, 1861.

By an order from the Quartermaster-General, dated April 10, 1863, to Capt. John H. Dickerson, and by him referred to Capt. D. W. McClung, assistant quartermaster, he was directed to settle the claim of Colonel Worthington arising out of his contract in accordance with justice, the regulations, and the terms of the contract. Whereupon Captain McClung, in August, 1863, made the following report, to wit:

[Report of D. W. McClung.]

By order of the Quartermaster-General, dated April 10, 1863, directed to Capt. John A. Dickerson, assistant quartermaster, and by him referred to me, I am required to settle the claims of Col. Thomas Worthington, arising out of his contract to furnish water to troops at Camp Dennison, Ohio, in May and June, 1861, "in accordance with justice, the regulations, and the terms of the agreement."

The original agreement requires the delivery of $1\frac{1}{2}$ gallons per man per day.

It is also stated that the casks must be filled at sunrise *and refilled as often as emptied during the day until sunset.*

This agreement seems to be contradictory; as in one clause it limits the amount for which payment can be made to $1\frac{1}{2}$ gallons per man per day and in another clause it requires a delivery only limited by the use or waste of the camp.

However, by the general rules of construing written documents, the specific limitations must be held as limiting and circumscribing the more general requirement of "refilling the casks as often as emptied."

The contrary construction would abolish all limits and leave us without any practicable basis for settlement.

In addition to this general rule, the fact of Colonel W. being paid at the limited rate, shows the intent of the government agent, while Worthington's acceptance of the pay precludes him from pleading this general clause as a reason for paying him for an increased amount.

This understanding of both parties to the agreement will appear more evident from Captain Dickerson's letter to General Bates, June 3, 1861, in which he says, "I have instructed him (Worthington) to limit his issue to the *amount contracted for.*"

This fact was not altered by Colonel W.'s proposition of May 16, as that proposition could only become effective *after* an additional allowance had been authorized.

In further evidence of this understanding, on the 3d of June, 1861, Captain Dickerson directs Colonel Worthington not to exceed the delivery of $1\frac{1}{2}$ gallons per man per day until the increase should be authorized by Major-General McClellan. This limitation therefore seems plain.

On the 20th of June an addition of one gallon per man per day was authorized. For this additional allowance Colonel W. is entitled to pay at the rate of 40 cents per hundred gallons, according to his proposition of May 16, which proposition was accepted by the very fact of the additional allowance being ordered without any other agreement or proposition.

Colonel W. has been paid at the rate of 15 cents per 100 gallons for $1\frac{1}{2}$ gallons per man per day, and 40 cents per 100 gallons for the additional allowance from the 10th of June, the date of the order authorizing an increase.

This opinion proceeds upon the supposition that the contract was fulfilled upon the part of the government or its agents. I was an acting assistant quartermaster and in charge of the camp during the time, and I speak mostly from personal knowledge. The contract was more than filled by Colonel W. But on the part of the other contracting party, not one stipulation was fulfilled save the one of paying the contract rate for the supply of water.

1st. It was agreed that the casks should be placed near the quarters of each company, convenient and accessible for the reception of water. The casks were supplied by me, but placed by company officers wherever their whim suggested, while access to them was very materially hindered by wood-piles, benches, tables, ditches, and other obstructions of an ill-regulated camp. The difficulty of delivery was increased one-half by this want of regularity and discipline.

2d. It was plainly implied that Colonel W. should be protected in the use of the means necessary for his work. But soldiers interfered with his water-carts and drays—the rules of the camp against crossing guard lines were made to bear harshly upon him; so much so, that he was entirely prevented from filling his casks from sunset to sunrise—his pump, intended for forcing water from the river into the casks on the drays was destroyed, thus compelling him to dip the water. The pipes designed for conveying water through the camp were torn up repeatedly, thus rendering his steam-engine comparatively useless.

This spirit of insubordination was partly owing to the want of discipline among twelve thousand raw troops, and more still due to the limited allowance of water and the location of the slaughter-house.

3d. It was stipulated and understood that the water should be taken from the river at the nearest point to the camp, distant about two-fifths of a mile. But the erection of a slaughter-house above the camp, from which the offal was thrown into the river, compelled Colonel W. to haul the water $1\frac{3}{4}$ miles, or about three times the distance. Officers refused to receive water from below the slaughter-house, and soldiers even threatened Colonel W.'s life if he did not provide purer water.

The supply of water first agreed upon was too little, and when adhered to caused great complaint and ill feeling. After the agreement with Colonel W. was annulled the work devolved upon me. To keep down complaints and clamor, I was required to furnish not less than 3 gallons per man per day, and in making permanent arrangements for watering the camp I considered 5 gallons per man per day the minimum.

I am required to settle Colonel W.'s claim in accordance with "justice, the regulations, and the terms of the contract."

By the "Regulations" I have no authority to substitute another agreement for the original one; and the "terms of the contract" are irreconcilable with "justice." I can therefore pay nothing by way of indemnifying Colonel W. for his expenses caused by the nonfulfillment by the government of its contract. "Justice" requires that Colonel Worthington should be paid an additional allowance of 15 cents per 100 gallons for $1\frac{1}{2}$ gallons per man per day for water delivered in May. And an additional allowance of 25 cents per 100 gallons for $1\frac{1}{2}$ gallons per man per day from June 1, the date at which he began hauling water the increased distance.

I base this estimate upon the actual cost of delivering water in camp under the same circumstances when I had control of the work.

I had no means of estimating the damage of Colonel Worthington's property by the violence referred to above.

I respectfully recommend the payment of an additional allowance as indicated above.

D. W. McCLUNG,
Captain and Assistant Quartermaster.

CINCINNATI, OHIO, *August, 1863.*

On June 17, 1869, Captain McClung, at request of Colonel Worthington, made the following affidavit, to wit:

HAMILTON, OHIO, *June 17, 1869.*

In the matter of Col. T. Worthington's claim for additional allowance for furnishing water to the troops at Camp Dennison, Ohio, in May and June, 1861, I beg leave to add the following: My recommendation of an additional allowance of 25 cents for 100 gallons was for the usual distance, *i. e.*, from the river at the points most convenient to the camp, and not for the increased distance caused by the offal from the slaughter-house. I would estimate that the cost of hauling from above the slaughter-house 50 per cent. greater than from the points on the river opposite the camp. And, further, I am decidedly of the opinion that the cost of delivery was increased at least 50 per cent. by the obstructions heretofore explained, which prevented access to the barrels provided for each company, as ditches, wood piles, &c. The estimate made by me in my report of 1863 of cost of hauling water by government carts was based on the shortest distance, as no offal was thrown into the river after I assumed the work of supplying water. But even at this shortest distance, and with a greatly diminished number of troops, I found the cost so heavy that I had wells dug, and these failing I had a stationary engine provided and reservoirs and pipes for a permanent supply.

D. W. McCLUNG.

And on June 30, 1882, he gave his deposition reiterating the statement contained in this affidavit.

Colonel Worthington, upon inquiry by the committee, admits that he has received what Captain McClung says in his report "justice" requires that he should be paid. But Colonel Worthington says that this was his due for water taken from the Miami River at the nearest point to the camp, and now claims that he should have an additional allowance for drawing water, which he was compelled to haul from a point on the river above the slaughter-house, in consequence of the government officers persisting in throwing the offal into the river above the camp instead of burying it as required to do by the Army Regulations; and your committee are decidedly of opinion that his claim is not only reasonable, but one the denial of which would be a most unjust, inequitable act toward an unfortunate but patriotic man.

It appears from the affidavit, report, and deposition of Captain McClung, taking the three papers together, that forty cents per hundred gallons was about the actual cost of furnishing the water from the river at the nearest point to the camp. He bases this statement on his experience in furnishing the water from the time Worthington ceased to furnish it. Captain McClung further testifies that the cost of hauling from above the slaughter-house was at least fifty per cent. additional to the cost of furnishing from the nearest point on the river.

By the express terms of the advertisement asking for proposals for furnishing the water, it was to be hauled from the river near by, or from wells in the vicinity. The evidence is clear that Colonel Worthington obtained the water at first from the river near the camp until the soldiers refused to receive it, in consequence of the offal being thrown into the river from the government slaughter-house, which was erected shortly after the first contract was made; that then Worthington furnished the water from springs and wells, some of which he dug at great expense, in order to supply the camp, and finally, upon these wells and springs giving out, he was compelled to draw the water in carts over bad roads a distance three times greater than the distance from the camp to the nearest point on the river.

It clearly appears from the report of Captain McClung that the water supply contracted for was entirely inadequate to supply the wants of the soldiers, but it quite as clearly appears that from the first Worthington did, without attempting to stand upon the strict letter of his contract, furnish the amount of water actually required.

Precisely how much water Colonel Worthington furnished your committee have no means of determining, but inasmuch as the supply furnished by him was satisfactory, it would seem from Captain McClung's experience in furnishing water after Worthington quit the business that he must have furnished from three to five gallons per man per day.

The committee are of opinion that the sum of \$2,127 should be allowed claimant, the same to be accepted as a full and final discharge of said claim for furnishing water at Camp Dennison, and for all damages and connections therewith, and report the accompanying bill and recommend its passage.

JAMES MILLINGER.

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GEDDES, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 6761.]

The Committee on War Claims, to whom was referred the petition of James Millinger, having had the same under consideration, submit the following report:

The claimant alleges that he was a loyal citizen, residing at Pittsburgh, Pa., in 1860, when he entered into a partnership with Robert McClay to carry on the lumber and planing-mill business at Nashville, Tenn. The style of the firm was Robert McClay & Co., and they erected at Edgefield, Tenn., a steam saw-mill, which cost them \$13,000.

It is alleged that in April, 1860, the said firm contracted with John Overton, of Nashville, Tenn., to build a large hotel there; that the work was well under way when the war commenced, and was continued till the capture of Nashville by the United States troops under General Buell; that in September, 1862, said hotel was taken by the United States forces, and held and used as barracks by United States troops till September, 1865, thus preventing said firm from completing the building according to contract.

It is also alleged that the United States forces took possession of the said saw-mill early in 1862, and ran the same one hundred and fifty-eight days, and consumed 50,000 feet of lumber and saw-logs belonging to said firm.

It is alleged that on the return of Overton from the rebellion, in February, 1865, he took the oath of allegiance, and received from the government rent for the use of said hotel after that time.

Claimant applied to the War Department for relief, and the Quartermaster-General referred the matter to General Thomas Sands, who instructed General George W. Marshall, at Nashville, to investigate and report thereon. He reported as follows:

ASSISTANT QUARTERMASTER-GENERAL'S OFFICE,
Nashville, January 31, 1867.

Respectfully returned, with the information that the case has been carefully and thoroughly investigated. Mr. Millinger having failed to furnish any memoranda or statement of articles lost or destroyed on account of the military occupation of the building, we called upon his attorney in this city, who made the inclosed statement, which is taken from the chancery court records in this city, and set forth in a suit brought by him, or firm to which he belonged, against Overton.

This statement has been submitted to the most reliable architects, builders, and me-

chanics in this city, and they inform me that the prices charged were low at the time the articles were furnished, and much below what it would cost to replace them. By examination of the affidavit of Charles Ferguson, taken in the city of Pittsburgh, Pa., and used as *evidence* in the suit in chancery, we find that the articles enumerated in George W. Jenkins's communication were shipped to this place by Millinger, and were placed in the Overton House, and that he (Millinger) purchased all the interest in this claim from his partner, assuming all responsibility for the indebtedness of the firm, by virtue of their contract for the construction of this building. Careful investigation shows that at the time the military took possession of the building Millinger (or his firm) had in said building—

540 doors and trimmings, worth.....	\$5,654 75
670 windows and trimmings, worth.....	12,573 00
Base-boards and grounds, worth.....	1,668 00

Total value of property	19,893 75
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All these articles were destroyed by the soldiers quartered in said building.

Undoubtedly Mr. Millinger's claim for \$19,893.75 is just and right, and \$22,000 would not replace the articles destroyed.

GEO. W. MARSHALL,
Brevet Major-General and Assistant Quartermaster-General.

Received at the Assistant Quartermaster-General Office, Louisville, February 4, 1867. Respectfully returned to the Quartermaster-General. Attention invited to the foregoing indorsement.

THOMAS SANDS,
Assistant Quartermaster, United States Army.

The War Department decided that it had no authority to pay the claim. The claimant then filed a claim before the commissioners of claims, and this tribunal held that it had no jurisdiction of the case.

The claimant alleges that McClay's interest in the contract was assigned to him, but furnishes no evidence of such assignment. There is no evidence to show the amount of work that had been done upon the hotel. There is no evidence to show what the claimant's interest was in the property of the firm of R. McClay & Co.

It seems to your committee that an investigation by the Secretary of War, or under his direction, is a matter of necessity before intelligent action can be had upon this case, and the history of the case is susceptible of proof; and while this is true, the committee desire the benefit of such proof outside of the *ex-parte* statements of the petitioner.

The committee, therefore, report herewith a bill conferring power upon the Secretary of War to have the case investigated through the Quartermaster's Department, and to report the result, with his recommendation thereon, to Congress for its action in the premises.

INTERNATIONAL EXHIBITION IN THE CITY OF AMSTER-
DAM, HOLLAND, IN MAY, 1883.

JULY 15, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. CANDLER, from the Committee on Commerce, submitted the following

R E P O R T :

[To accompany S. Res. 52.]

The Committee on Commerce, to whom was referred the joint resolution (S. Res. 52) authorizing the government of the United States to accept the invitation of the Government of the Netherlands to take part in a general colonial and export-trade exhibition to be held in Amsterdam in the year 1883, having had the same under consideration, make the following report:

The international exhibition is to be held in the city of Amsterdam in May, 1883, and is intended to encourage and promote the commercial relations between the Netherlands, her colonies, and other nations.

Your committee believe that it is for the interest of the people of the United States to inform themselves in regard to the productions and the commercial operations of other countries, and to endeavor to extend a knowledge of the productions in which we excel.

Since the Philadelphia exhibition many articles produced in the United States have been largely introduced into the European countries—articles of manufacture as well as the productions of the soil. Our export trade of leather has greatly increased to the European countries; and the reports of our consuls, particularly in some parts of Germany, indicate within the last two or three years an increasing sale of articles of American invention and manufacture for domestic, mechanical, and agricultural uses.

As the business enterprise and commercial growth of the people of Holland, with whom our export trade is very large, and who have invested heavily in the securities of the United States, must be of interest to the people of this country, it seems of national importance that the United States should accept the invitation extended to them, and not fail to be represented by a commissioner at the exhibition.

The committee therefore recommend the passage of the resolution.

The following is the programme of the exhibition adopted by the committee selected at Amsterdam:

The projected exhibition will be subdivided into five great departments:

1st. Colonial exhibition.

2d. General export exhibition.

3d. Retrospective exhibition of fine arts and arts applied to industry.

4th. Special exhibitions.

5th. Scientific lectures and meetings.

ARTICLE 1. The colonial department forms the main basis of the exhibition.

A comparative inquiry into the various systems of colonization, of tropical agriculture, of the exploitation of the treasures of the soil, promises to be a useful and original labor, worthy of the general interest.

This exhibition should not be limited to a mere show of materials and products, but must also offer an opportunity of comparing the manners and customs of the natives of the transatlantic regions.

Public works and means of conveyance, as being the foundations of prosperity and civilization, should form part of the exhibition.

It is likewise thought desirable to represent specimens from the fauna and flora of the colonies, as images of the luxuriant nature of the tropical countries.

Finally, the army and navy, those bulwarks of liberty, should not be wanting.

ART. 2. The second department will contain all that belongs or relates to the general export trade. A vast space will be set apart for industry as applied to the transformation of matter, whilst industry and commerce will find ample opportunity for honest competition.

ART. 3. In the third department will be exhibited specimens of art from the remotest times, as an instructive picture of the ideas that have existed with regard to them among the original peoples, and how these ideas have been developed under the influence of civilization.

A comparative inquiry into the fine arts of different periods and nations seems highly interesting.

ART. 4. The object of the fourth department is that of temporary exhibitions. These will be for the greater part of a national character, so as to show the native products of agriculture and industry and as tending to promote the general interest.

ART. 5. The fifth department is the intellectual part of the exhibition. Scientific lectures and meetings will offer an opportunity to the men of science, those pioneers of civilization, to communicate their ideas on and discuss the interests of trade and industry, of science and art, international law, education, hygiene, &c. Colonial economy, especially the relations between the mother country and colony, will occupy a first place in the list of interesting subjects of discussion.

The interests of mankind are universal, as the human genius is.

We venture to hope that the invitation which the Dutch Government will forward to the other European powers for the hearty support of the colonial exhibition of Amsterdam will meet with a favorable reception, so that by a general co-operation a complete success may be secured.

Even the mightiest nations will profit by occasionally entering into intellectual contests with their rivals, be it only for the purpose of showing that power and wealth, supported by moral and intellectual energy, will ever continue to deserve the esteem of the whole civilized world.

Extending the commercial operations, encouraging industry, raising the moral force of nations, strengthening the bond of union among the peoples, those will be the salutary fruits of so many united efforts, both for the colonies and the mother country.

Amsterdam, August 15, 1881.

For the executive committee:

D. CORDES, *President.*

S. DE CLERCQ, WZN., *Deputy Member.*

J. KAPPEYNE VAN DE COPPELLO, *Secretary.*

E. AGOSTINI, *General Commissary.*

THE "OLD SETTLERS," OR "WESTERN CHEROKEES."

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HOOKER, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 1203.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 1203) to refer the claim of the "Old Settlers," or "Western Cherokees," to the Court of Claims for adjudication, have considered the same, and report thereon, as follows:

It appears, from the papers submitted, that the claim is based upon alleged errors committed by the officers of the government having charge of and stating the account between them and the United States in relation to their interest in the proceeds of the sale of the Cherokee lands east of the Mississippi River, as provided in the treaty between the United States and the Cherokee Indians of 1835.

It also appears by the terms of the fourth article of the treaty of 1846 that these claimants were to receive, in consideration of their consenting to the stipulations therein contained—that the lands formerly owned by these claimants, exclusively, west of the Mississippi River should thereafter be the common property of all the Cherokee people—they should receive one-third of the proceeds of the sale of the Cherokee lands east of that river. The committee deem it unnecessary to refer in this report to the history of the claimants or their relations to the Eastern Band of the Cherokee Indians prior to the treaty of 1835, as shown by the papers, as that is fully given in two reports heretofore made by Senate committees on the same subject.

Under the fifteenth article of the treaty of 1835 the authority seemed to be given for deducting from the fund due these Indians "the amount which shall be actually expended for the payment for improvements, ferries, claims, for spoliations, removal, and subsistence, and debts and claims upon the Cherokee Nation, and for additional quantity of land and goods for the poorer of Cherokees, and the several sums to be invested for the general national funds provided for in the several articles of that treaty. The balance, whatever the same may be, shall be equally divided between all the people belonging to the Cherokee Nation East, according to the census just completed, and such Cherokees as have removed west since June, 1833."

By the second article of the supplement to this latter treaty it is provided and declared "that the sum of five millions of dollars fixed by the Senate in their resolution of — day of March, 1835, as the value of the Cherokee lands and possessions east of the Mississippi River was

not intended to include the amount which may be required to remove them, nor the value of certain claims which many of their people had against the United States."

The third article of the supplement to that treaty allows these Indians the sum of \$600,000, to meet the foregoing items, and the balance of this latter sum, that "may remain after removal and payment of the claims so ascertained shall be turned over and belong to the educational fund."

After concluding the last-named treaty and the supplement thereto it seems that serious difficulties arose between portions of the people constituting and organized as the Cherokee Nation of Indians, growing out of charges to be made against the Western Cherokees, and to be deducted from the \$5,000,000 fund, as the purchase of their lands east of the Mississippi River, under the treaty of 1835. To settle these difficulties and to bring about a final and amicable settlement of all these causes of differences the treaty of August 6, 1846, was entered into between both the Eastern and Western Cherokees and the United States.

By the first article of this treaty all the lands formerly granted to and held and occupied by the "Western Cherokees" were to be occupied and enjoyed by all the Cherokees in common.

And, to settle and have definitely understood what claims or charges that should, and what should not, be made against the \$5,000,000 fund (the proceeds of the sale of their land east), the third article of this latter treaty provides that—

Whereas certain claims have been allowed by the several boards of commissioners heretofore appointed under the treaty of 1835, *for rents under the name of improvements and spoliation, and for property of which the Indians were dispossessed, provided for under the 16th article of the treaty of 1835*; and whereas the said claims have been paid out of the \$5,000,000 fund; and whereas said claims were not justly chargeable to that fund, but were to be paid by the United States, the said United States agree to reimburse the said fund the amount thus charged to said fund—and the same shall form a part of the aggregate amount to be distributed to the Cherokee people—as provided in the ninth article of this treaty; and whereas a further amount has been allowed *for reservations under the provisions of the thirteenth article of the treaty of 1835* by said commissioners, and has been paid out of said fund, and which said sums were properly chargeable to, and should have been paid by, the United States: the said United States further agree to reimburse the amounts thus paid for reservations to said fund; and whereas the expenses of making the the treaty of New Echota were also paid out of said fund, when they should have been borne by the United States: the United States agree to reimburse the same, and also to reimburse all other sums paid to any other agent of the government and improperly charged to said fund, and the same shall form a part of the aggregate amount to be distributed to the Cherokee people as provided for in the ninth article of this treaty.

The terms "excluding all extravagant and improper expenditures," contained in the 4th article, evidently meant the items specified in the 3d article, which declares that the items therein mentioned should not be chargeable to the \$5,000,000 fund, but be borne by the United States. It is provided by the 4th article that "so far as the Western Cherokees are concerned, in estimating the expense of removal and subsistence of an Eastern Cherokee, to be charged to the aggregate fund of five millions six hundred thousand dollars above mentioned, the sums for removal and subsistence stipulated in the 8th article of the treaty of 1835, as commutation money in those cases in which the parties entitled to it removed themselves, shall be adopted."

The 8th article of the treaty of 1835 fixes those sums at \$53.33 per head.

The 4th article of the treaty of 1846 further provides that so far as the settlement with the Western Cherokees is concerned, "there shall be no deduction from the fund before mentioned in consideration of any

payments which may hereafter be made out of said fund; and it is hereby further understood and agreed that the principle above defined shall embrace all of those Cherokees west of the Mississippi who emigrated prior to the treaty of 1835."

This article and the 3d article of the treaty of 1846 defines the basis of the settlement to be made with the old settlers, or Western Cherokees, and fixes the sum from which the charges proper to be made against them shall be deducted at \$5,600,000.

The 9th article of this treaty fixes the basis of settlement with the Eastern Cherokees, and the sum from which charges against them shall be deducted, at \$6,647,067.

The eleventh and only remaining article of the treaty of 1846, affecting the claim of the Western Cherokees provides as follows:

Whereas the Cherokee delegates contend that the amount expended for one year's subsistence of the Eastern Cherokees after their arrival in the West, is not properly chargeable to the treaty fund: it is hereby agreed that the question shall be submitted to the Senate of the United States for its decision, which shall decide whether the subsistence shall be borne by the United States or the Cherokee fund, and if by the Cherokees, then to say whether the subsistence shall be charged at a greater rate than thirty-three, thirty-three one-hundredths dollars per head; and also the question whether the Cherokee Nation shall be allowed interest on whatever sum may be found to be due the nation, and from what date and at what rate per annum.

(The twelfth article of this treaty was stricken out by the Senate upon the ratification of the treaty, which was assented to by the Cherokees.)

The questions submitted to the Senate of the United States by the eleventh article were settled by the Senate, and thereby became a part of the treaty stipulations by the adoption of the following resolutions, September 5, 1850 (Cong. Globe, vol. 21, part 2, 1849-'50, p. 1760):

Resolved by the Senate of the United States, That the Cherokee Nation of Indians are entitled to the sum of \$189,422.76 for subsistence, being the difference between the amount actually paid and that expended by the United States, and which excess was improperly charged to the "treaty fund" in the report of the accounting officer of the Treasury.

Resolved, That it is the sense of the Senate that interest at the rate of 5 per cent. per annum should be allowed upon the sums found due the Eastern and Western Cherokees, respectively, from the 12th day of June, 1838, upon the treaty of 1846.

By the second of the above resolutions it was declared that the Cherokees were entitled to interest upon any sums due them under the treaties of 1835 and 1846, from the 12th day of June, 1838.

The committee find that among the items of the claim of the Western Cherokees there is one that is a manifest error in settling with these Indians, namely, the item of "removal and subsistence, at the rate of \$53.33 per head, \$909,313.34," found on page 19, Report of the Commissioner of Indian Affairs, Ex. Doc. 65, first session Thirtieth Congress. This item in the Commissioner's statement of the account does not state the number of Indians removed and subsisted at that rate, but on page 17 of that report the number is stated at 13,149. That number, at the rate of \$53.33 per head, would amount to the sum of \$701,236 instead of \$909,313.34, as charged, making an error against the Western Cherokees of \$208,077.34 in the simple matter of calculation.

Besides this item, these Indians claim that by a fair construction of the treaties with them and the acts of Congress relating to their rights under these treaties, they should not be charged, as was done by the accounting officers of the government, in their settlements, with the items—

First. The charge for claims of citizens of the United States of \$59,574.25.

Second. The charge for claims of individual Cherokees, \$17,561.41.

Third. The charge for compensation to Cherokee committee, \$22,026.89.

Fourth. The charge for spoliation, rents, and damages, \$434,861.85.

Fifth. The charge for reservations, allowed, \$116,882.50.

Sixth. The charge for pre-emptions, \$15,589.

Seventh. The charge for and on account of removal and subsistence, \$32,666.65.

There is a peculiarity about the last of the above items that throws some doubt around its correctness, for the cost of subsistence and removal to be borne by the Western Cherokees, as above shown, had not only been charged to them, but overcharged, and the fact that it took just this latter sum to effect a balance of the account with these Indians seems to furnish the reason for the doubt about the correctness of this last item.

The claimants contend, and the committee are of opinion, that the receipt by these Indians of the sum of \$523,782.18, appropriated by the act of September 30, 1850, in the manner in which they received it, does not preclude them from making their claim for any other sum that may be justly due them under a fair and proper interpretation of the treaties with them. Though the act making that appropriation provides "that the Indians who shall receive the said money shall first respectively sign a receipt or release acknowledging the same to be in full of all demands under the fourth article of said treaty," it appears that before these Indians would consent to receive the said sum thus appropriated, they were assured by the agent of the government sent to make the payments, Mr. John Drennon, that they could receive the money under protest and thereby preserve their rights under the treaties between them and the United States for any amounts that might be due them by a just and equitable construction of said treaties.

It also appears that these Indians, before receiving any part of that appropriation, did formally and in writing deliver to said agent their solemn protest against receiving the same as a full settlement of all their claims against the United States under said treaties, which protest, as appears by the records of the Interior Department, was forwarded to the Commissioner of Indian Affairs at Washington City.

The facts necessary to determine the justness of the claim preferred by these Indians consist almost, if not entirely, of the public treaties, proceedings of the Senate, acts of Congress, and the records of the several departments of the government, all of which are preserved.

The committee are of opinion that the claim of these Indians possesses sufficient merit to demand a careful and thorough investigation of the same; that such an investigation involves a judicial interpretation of the several treaties between them and the United States, the construction of the several acts of Congress in relation thereto, and the examination of all settlements made and accounts stated with them under these treaties and acts of Congress; that such an investigation cannot be made by a committee of Congress in the limited time allowed such committee by the performance of the ordinary legislative duty imposed upon its members; and that this case should receive a full investigation by the courts.

The committee is strengthened in this conclusion by the opinion of the Commissioner of Indian Affairs on this subject, contained in his letter of June 7, 1882, transmitted to the Committee by the honorable Secretary of the Interior, a copy of which is appended to this report.

Therefore the committee report back bill H. R. 1203, and recommend its passage with the following amendments, as suggested by the Interior

Department: After the word "and" in line 28 insert the word "on," and after the word "thereon" in line 29, "and on any sum found due said Old Settler Cherokees."

JUNE 7, 1882.

To the honorable the Secretary of the Interior:

SIR: I have the honor to submit herewith House bill 1203, to refer the claim of the Western Cherokees, or "Old Settlers," to the United States Court of Claims for adjudication, forwarded May 23, 1882, by Hon. D. C. Haskell, chairman of House Committee on Indian Affairs (through Mr. Smith, clerk), for the advice and suggestion of the department on the subject-matter for the information of the committee.

H. R. 1203 appears to be a duplicate of Senate bill 321, which was introduced in the Senate December 8, 1881, and reported upon by Senator Cameron, of Wisconsin, March 29, 1882 (Senate report 353), who stated that a similar bill had been considered by the Senate Committee on Indian Affairs at the last session of Congress, and it had been reported favorably from that committee by Senator Logan. Senator Logan set out in detail the claim as presented by the "Old Settlers," showing the history and movements of these Indians, their rights, acquired under the treaties of 1817, 1819, 1828, and sustained by the correspondence between the contracting parties in the Executive and War Departments, anterior to the treaty of 1835.

The separate nationality of the Western Cherokees, and their exclusive title to their lands stood until 1835, when the treaty of that year was concluded between the United States and the Cherokee Nation.

By the first article of that treaty of 1835, the Cherokees, for the sum of \$5,000,000, ceded to the United States all their lands east of the Mississippi River and released all their claims upon the United States for spoliations of every kind. By the fifteenth article, the amount actually expended for improvements, ferries, claims for spoliations, removal and subsistence, and debts and claims upon the Cherokee Nation, and for additional quantity of land and goods for the poor Cherokees, was to be deducted from said \$5,000,000.

By the second article of the supplementary treaty of 1836, it was declared that it was not the intention to include the expense of removal and subsistence in the \$5,000,000 allowed by the Senate, and by the third article of said treaty \$600,000 was allowed to meet such expenses. Difficulties arising in the adjustment of these claims, the treaty of 1846 was entered into between both the Eastern and Western Cherokees and the United States; by the first article of which the lands formerly granted to and held by the Western Cherokees were to be occupied and enjoyed by all the Cherokees in common.

The third article defined what claims or charges should, and what should not, be made against the \$5,000,000 (the proceeds of the sale of their lands East).

The third and fourth articles of the treaty of 1846 defined the basis of the settlement to be made with the "Old Settlers," or Western Cherokees, and fixed the sum from which the charges proper to be made against them should be deducted at \$5,600,000.

The ninth article fixed the basis of settlement with Eastern Cherokees and the sum from which charges against them should be deducted, at \$6,647,067. By the eleventh article the question was submitted to the United States Senate for decision, whether the subsistence of Eastern Cherokees, for one year after their arrival West, should be paid by the Cherokees or by the United States, and if by the Cherokees, whether more than \$33.33 should be allowed, and whether the Cherokees should be allowed interest on whatever sum was due the Nation, and from what date and at what rate per annum.

The Senate on the 5th of September, 1850 (Cong. Globe, vol. 21, part 2, 1849-'50, page 1760), adopted the following resolution:

"Resolved by the Senate of the United States, That the Cherokee Nation of Indians are entitled to the sum of \$189,422.76 for subsistence, being the difference between the amount actually paid and that expended by the United States, and which excess was improperly charged to the treaty fund in the report of the accounting officers of the Treasury.

"Resolved, That in the sense of the Senate, that interest at the rate of 5 per cent. per annum should be allowed upon the sums found due the Eastern and Western Cherokees, respectively, from the 12th day June, 1838, upon the treaty of 1846."

The aforesaid sum of \$189,422.76 was appropriated by Congress (act of September 20, 1850, 9 Stat., 536), and at the same time there was appropriated—

"To the 'Old Settlers' or Western Cherokees, in full of all demand, under the provisions of the treaty of 6th August, 1846, according to the principles established in the 4th article thereof, \$532,896.90, and that interest be allowed and paid upon the

Third. The charge for compensation to Cherokee committee, \$22,026.89.

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Fifth. The charge for reservations, allowed, \$116,882.50.

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It also appears that these Indians, before receiving any part of that appropriation, did formally and in writing deliver to said agent their solemn protest against receiving the same as a full settlement of all their claims against the United States under said treaties, which protest, as appears by the records of the Interior Department, was forwarded to the Commissioner of Indian Affairs at Washington City.

The facts necessary to determine the justness of the claim preferred by these Indians consist almost, if not entirely, of the public treaties, proceedings of the Senate, acts of Congress, and the records of the several departments of the government, all of which are preserved.

The committee are of opinion that the claim of these Indians possesses sufficient merit to demand a careful and thorough investigation of the same; that such an investigation involves a judicial interpretation of the several treaties between them and the United States, the construction of the several acts of Congress in relation thereto, and the examination of all settlements made and accounts stated with them under these treaties and acts of Congress; that such an investigation cannot be made by a committee of Congress in the limited time allowed such committee by the performance of the ordinary legislative duty imposed upon its members; and that this case should receive a full investigation by the courts.

The committee is strengthened in this conclusion by the opinion of the Commissioner of Indian Affairs on this subject, contained in his letter of June 7, 1882, transmitted to the Committee by the honorable Secretary of the Interior, a copy of which is appended to this report.

Therefore the committee report back bill H. R. 1203, and recommend its passage with the following amendments, as suggested by the Interior

Department: After the word "and" in line 28 insert the word "on," and after the word "thereon" in line 29, "and on any sum found due said Old Settler Cherokees."

JUNE 7, 1882.

To the honorable the Secretary of the Interior:

SIR: I have the honor to submit herewith House bill 1203, to refer the claim of the Western Cherokees, or "Old Settlers," to the United States Court of Claims for adjudication, forwarded May 23, 1882, by Hon. D. C. Haskell, chairman of House Committee on Indian Affairs (through Mr. Smith, clerk), for the advice and suggestion of the department on the subject-matter for the information of the committee.

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"Resolved, That in the sense of the Senate, that interest at the rate of 5 per cent. per annum should be allowed upon the sums found due the Eastern and Western Cherokees, respectively, from the 12th day June, 1838, upon the treaty of 1846."

The aforesaid sum of \$189,422.76 was appropriated by Congress (act of September 20, 1850, 9 Stat., 536), and at the same time there was appropriated—

"To the 'Old Settlers' or Western Cherokees, in full of all demand, under the provisions of the treaty of 6th August, 1846, according to the principles established in the 4th article thereof, \$532,896.90, and that interest be allowed and paid upon the

above sums due respectively to the Cherokees and 'Old Settlers,' in pursuance of the above-mentioned award of the Senate, under the reference contained in the said eleventh article of the treaty of the 6th August, 1846. *Provided*, That in no case shall any money hereby appropriated be paid to any agent of said Indians, or to any other person or persons than the Indian or Indians to whom it is due: *Provided, also*, That the Indians who shall receive the said money shall first respectively sign a receipt or release, acknowledging the same to be in full of all demands under the 4th article of said treaty."

By these appropriations, it would seem that a final settlement of the claims of these "Old Settlers" was thereby effected, or attempted to be effected, but the Senate committee of the last Congress held that the Indians received the money under protest; that the claim of the Indians possessed sufficient merit to demand a careful and thorough investigation of the same; that such an investigation involved a judicial interpretation of the several treaties between them and the United States, the construction of the several acts of Congress in relation thereto, and the examination of all settlements made, and accounts stated with them under these treaties and acts of Congress, and that this case should receive a full investigation by the courts.

Senator Cameron's committee concurred in and adopted the report made by Senator Logan's committee as its own, and reported back the bill with recommendation that it do pass.

This office, when the subject was before the Forty-fourth Congress, submitted a report to the honorable Secretary of the Interior on the 21st of June, 1876 (copy herewith), recommending that the Indians should first present their claim to the department for examination, stating the nature and amount of said claim, with full reference to all provisions of law or treaty stipulations.

Accepting the views taken by both Senate committees, and knowing that these "Old Settlers" have been before the department for many years with their memorials and claims, no objection is made to the passage of the bill, as it provides the only means of reaching a final decision in the case, unless exception is made to the deduction (for expenses of former "Old Settler" councils, expenses of commissioners, and expenses of attorneys to help prosecute said claim) of 35 per cent. of the claim allowed, as set forth in the resolutions (copy herewith) referred to in the third section of the bill.

The bill is herewith returned with the recommendation that the word "on" be inserted after the word "and" in the 28th line, and that the word "thereon" in the 29th line of the first section of the bill be stricken out so as to read "and on any sum found due said 'Old Settler' Cherokees," interest to be paid from the time and at the rate fixed by the Senate, * * * thereby conforming to the language of the Senate bill.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

JUNE 13, 1882.

SIR: I have the honor to transmit herewith a copy of the report of the Commissioner of Indian Affairs, of the 7th instant, with inclosures, one House bill, No. 1203, "to refer the claims of the Western Cherokees, or 'Old Settlers,' to the Court of Claims for adjudication."

Very respectfully,

H. M. TELLER,
Secretary.

Hon. D. C. HASKELL,
Chairman Committee on Indian Affairs, House of Representatives.

In reference to the remark of the honorable commissioner as to amount of 35 per cent. set apart by the counsel of the Old Settlers in 1875, we affixed the following resolutions, adopted by a similar counsel in 1880, which was reaffirmed in 1881:

Be it further resolved, That J. M. Bryan, our special commissioner and attorney, who is himself a citizen of the Cherokee Nation and an "Old Settler," and by our former council was duly made treasurer for the amount of 35 per cent. of the amount of the claim that may be allowed. The first council creating said commission was in 1875, at which council 35 per cent. of the whole claim was set apart to pay the expenses of former Old Settlers' councils, to pay the expenses of our commissioners, to pay the expenses of attorneys employed to help prosecute said claim, *or as much thereof as might be necessary.*

Therefore, we again reiterate that J. M. Bryan is fully authorized to receive the said amount of 35 per cent. of the whole amount allowed on said claim as the "Old

Settler" Cherokee treasurer, and to receipt to the proper authorities of the United States for said amount, which shall be the "Old Settler" Cherokees' receipt for the same.

Submitted by—

H. D. REESE,
W. C. WOODALL,
JOHN HENDRICKS,
Committee.

The above resolution being interpreted and put to vote, was unanimously adopted.
W. A. DUNCAN,
President.

H. D. REESE,
Secretary.

I hereby certify that the above is a true copy of the proceedings had by the "Old Settlers" council.

Given under my hand and seal of office, at Tahlequah, Cherokee Nation, I. T., this 23d day of November, 1880.

ALLEN ROSS,
Clerk, Tahlequah District, C. N., I. T.

Approved November 26, 1880.

D. W. BUSHYHEAD,
Principal Chief, Cherokee Nation.

I hereby certify that this is a true copy of the original.

DELOZIER DAVIDSON,
Notary Public.

WASHINGTON, D. C., *January 3, 1881.*

From this it is clearly shown that only so much of that per cent. as may be necessary to meet the expenses of the prosecution and collection of their claim and the annual expenses of their councils can be thus used; the balance, if any, their said commissioners would have to return to the fund to be distributed to those Indians *per capita*.

J. M. BRYAN,
Old Settler Commissioner.

AMERICAN REGISTER TO THE BRITISH VESSEL BARROW-
DALE.

JULY 15, 1882.—Laid on the table and ordered to be printed.

Mr. WARD, from the Committee on Commerce, submitted the following

R E P O R T :

[To accompany bill H. R. 3024.]

The Committee on Commerce, to whom was referred the bill (H. R. 3024) to authorize the Secretary of the Treasury to issue an American register to the British vessel Barrowdale, having had the same under consideration, beg leave to report:

The undisputed facts in this case are as follows: The Barrowdale was an English-built steamer sailing under the British flag, and while being loaded with cotton at a port in one of the Southern States caught fire in the cargo and was sunk in order to save her from total destruction. She was raised from this sunken condition at an expense of about \$10,000, brought to New York, and then sold at auction. Her purchasers expended considerable money in repairing and refitting, and now apply for an American register.

The laws of the United States provide, in reference to vessel-owners seeking to obtain an American register for foreign-built ships, section 4132 of the Revised Statutes, that "vessels built within the United States, and belonging wholly to citizens thereof, and vessels which may be captured in war by citizens of the United States and lawfully condemned as prize, or which may be adjudged to be forfeited for a breach of the laws of the United States, being wholly owned by citizens, *and no others*, may be registered as directed in this title." And section 4136 provides that "the Secretary of the Treasury may issue a register or enrollment for any vessel built in a foreign country, whenever such vessel shall be wrecked in the United States and shall be purchased and repaired by a citizen of the United States, if it shall be proved to the satisfaction of the Secretary that the repairs put upon such vessel are equal in value to three-fourths of the cost of the vessel when so repaired."

It is not asserted that the Barrowdale is within the scope of either of the above-recited sections, or that "the repairs put upon such vessel are equal in value to three-fourths of the cost of the vessel when so repaired." Consequently, the bare question presented is whether your committee shall make an exception in the present case and extend the operation of the registry laws over foreign-built vessels. There are grave reasons why this course should not be pursued. The American registry laws are founded upon wise policy, and are intended to preserve to the government a supervising power over the construction,

the equipment, and the officers in command of every ship that carries the American flag, and thereby becomes, in some degree, a representative of our national character and honor.

Furthermore, at the present time the revival of the American commercial marine is conceded to be a subject of national importance, and is widely discussed. It must be evident that the judicious control over vessels bearing our flag, and the revival of our commerce, can be secured and maintained only by fostering the ship-building interest of the United States. It is asserted from reliable sources that commercial advices from England inform us that the ship-yards of Great Britain are suffering seriously for want of a market for their vessels, and that great numbers of steamships and sailing vessels are lying idle in all the ports, or vainly cruising about to and from foreign ports in search of employment. We can never increase American commerce by permitting foreign ship-builders and ship-owners to register all their surplus vessels as though they were American craft, when it is obvious that the only result of such a movement would be to diminish the employment of our own vessels in our own domestic navigation, in the coasting trade, and on the internal navigable waters of the country.

Your committee have heretofore given expression to their views on this subject by reporting unfavorably such applications, and for the reasons above stated decide to adhere to their action in the present case, and therefore respectfully report back the bill with a recommendation that it do not pass.

STOVALL vs. CABELL.

JULY 18, 1882.—Ordered to be printed.

Mr. ATHERTON, from the Committee on Elections, submitted the following

REPORT:

Your committee, having had under consideration the contest for a seat in the House of Representatives from the fifth Congressional district of Virginia, submit the following report:

The parties to the contest are John T. Stovall, who was the candidate upon the ticket known as the Readjuster ticket, and George C. Cabell, who was the Democratic candidate. This district is composed of the counties of Halifax, Pittsylvania, Henry, Franklin, Patrick, Floyd, Carroll, and Grayson, and the town of Danville.

The official returns made under the laws of Virginia to the office of the secretary of the commonwealth, and duly canvassed by the State board of canvassers on the fourth Monday of November, 1880, show (11,778) eleven thousand seven hundred and seventy-eight votes for George C. Cabell, and (10,919) ten thousand nine hundred and nineteen votes for John T. Stovall, or a majority of 859 votes for the contestee Cabell.

The detailed statement of the vote is as follows:

Statement of the whole number of votes cast in the counties and corporations forming the fifth Congressional district of Virginia, in an election for a Representative in the Congress of the United States held pursuant to law, the first Tuesday after the first Monday in November, 1880.

	George C. Cabell.	John T. Stovall.	Tony Stovall.	T. Stovall.	Beverly A. Davis.
Halifax.....	1, 839	2, 179	.....	.....	.....
Pittsylvania.....	3, 176	2, 773	.....	.....	.....
Henry.....	725	1, 191	.....	.....	.....
Franklin.....	1, 778	1, 464	.....	.....	1
Patrick.....	769	750	.....	.....	.....
Floyd.....	692	605	.....	.....	.....
Carroll.....	1, 160	494	.....	.....	.....
Grayson.....	761	783	.....	.....	.....
Danville.....	731	585	1	1	.....
North Danville.....	147	95	.....	.....	.....
	11, 778	10, 919	1	1	1

We, the undersigned, a board of State canvassers, do hereby certify that the foregoing statement is correct.

FRED. W. M. HOLLIDAY,
Governor.

T. T. FAUNTLEROY,
Secretary of the Common'th.

JOHN E. MASSEY,
Auditor of Public Accounts.

C. M. REYNOLDS,
State Treasurer.

JAS. G. FIELD,
Attorney-General.

The contestant does not claim in his notice of contest that he was elected a Representative to the Forty-seventh Congress, but that he would have been elected but for certain wrongs of which he complains. To all of contestant's allegations the contestee interposed a general as well as a specific and particular denial and challenged the proof.

The contestant has not attempted to substantiate by proof any of the grounds of contest specified in his notice except such as relate to the precincts of Danville, Cascade, Brosville, Hall's Cross-Roads, and Ringgold, in the county of Pittsylvania; Charity and Gates's Store, in Patrick County; and Hillsville and Dalton's Store, in the county of Carroll.

He has offered some testimony, which has been duly considered, relating to the precinct of Phillips's Store, Nester's, Fancy Gap, and Smith's Mill, in Carroll County. But these precincts are not mentioned in the notice of contest, and the depositions relating to them were objected to for that reason by the contestee, and are inadmissible. Besides, the depositions were, in disregard of the contestant's objections, taken in Carroll County by a Pittsylvania County notary, who had no authority, under State or Federal law, to take them.

If all the demands made by the contestant, in his notice of contest, respecting the precincts to which his proofs relate, be conceded, the result will be as follows:

G. C. CABELL.

Returned vote	11,778	
Add Charity	20	
		11,798

Deduct.

Danville	731	
Hall's Cross-Roads	196	
Cascade	127	
Ringgold	242	
Brosville	167	
Gates's Store	80	
Hillsville	77	
Dalton's Store	120	
		1,573
		10,225

J. T. STOVALL.

Returned vote	10,919	
Add Charity	51	
		10,970

Deduct.

Danville	585	
Hall's Cross-Roads	143	
Cascade	79	
Ringgold	238	
Brosville	42	
Gates's Store	37	
Hillsville	37	
Dalton's Store	7	
		1,126
		9,844

Majority for G. C. Cabell, 381.

Moreover, if instead of rejecting the entire vote of Danville, where the contestee received a majority of 156 votes, we add to the contestant's vote the 550 ballots which, in some extraordinary manner, he claims in his brief, but not in his notice of contest, should have been

excluded on account of double registration, the contestee would still have a majority?

We will examine as to some of the testimony in the order presented.

DANVILLE, PITTSYLVANIA COUNTY.

What changes, if any, are to be made in favor of the contestant in the returned vote of the town of Danville?

The contestant charges that he was deprived of five hundred votes in that town by the deliberate and arbitrary misconduct of persons acting in the interest of the contestee, with the purpose of defrauding or depriving the contestant of such votes. Under this general charge he makes four different specifications.

1. He asserts that an organization of the contestee's political friends, known as the Hancock and English Club of Danville, by systematic threats and menaces of proscription, in business and in social relations, against the contestant's supporters, intimidated a large number of voters in that town, and deterred them from voting for the contestant.

2. He alleges that at a meeting of the Danville Tobacco Association resolutions were submitted, before the day of the election, to the effect that members of that association would not bid on tobacco offered for sale at public auction on the Danville market by any person whose avowed purpose it was to vote for the contestant; and that, although these resolutions were not adopted by the association, they were acted on, not only by its members in their refusal to bid on tobacco so offered, but also by the association itself, in the removal of one of its supervisors of public sales, because of his persistence in supporting the contestant.

3. He asserts that the judges of election and challengers, with the aid of many members of this Hancock and English Club, who, acting in concert as friends of the contestee, formed a barrier in front of the polls, deprived three hundred colored supporters of the contestant of the opportunity to vote, by the following devices:

(1.) By means of this barrier formed by the contestee's friends in front of the polls, the colored supporters of the contestant were excluded from the polls for some time in the morning, after the opening of the polls had been delayed for a considerable period beyond the hour fixed by law.

(2.) These voters were then kept waiting while the judges and challengers consumed the time in asking them unnecessary and silly questions, for the purpose of defeating their efforts to vote for the contestant.

(3.) Meantime the friends of the contestee were permitted to approach the polls, by an entrance at the rear of the building, and to vote rapidly, without challenge.

(4.) The judges and challengers, with the aid of a police force friendly to the contestee, compelled the contestant's supporters to approach the polls singly or in couples.

(5.) The judges and challengers required supporters of the contestant, whom they knew to be regularly registered, and to be entitled to vote, and who held their tax-receipts in their hands, to procure at other precincts certificates that they were not registered, or had not voted there.

(6.) The judges of election required supporters of the contestant, who had recently attained the age of twenty-one years, to produce their fathers, or mothers, or to do some other impracticable thing, to prove their age, instead of accepting their own oaths, as required by law.

(7.) Meantime the judges of election were receiving votes from the

supporters of the contestee as rapidly as possible—in some cases from those not entitled to vote.

4. He alleges that one of the supervisors of election, in the town of Danville, some days before the election, took possession of the registration books, and kept them in his possession, so as to hinder, delay, and prevent transfers of registration to other places, to which voters had removed.

The contestant has examined several witnesses, whose testimony, if it were uncontradicted, would slightly tend to establish some of his numerous averments relating to the Court-House precinct and the Grave's Warehouse precinct, in the town of Danville. And yet two-thirds of the contestant's witnesses, who testify that access to the polls was difficult, state that they were crowded off, not by white but by colored men.

But the testimony of all these witnesses sworn for the contestant on the points now under consideration is successfully met and wholly contradicted by that of the witnesses produced on behalf of the contestee. Contestee, beyond all question, is entitled to his majority in Danville.

HALL'S CROSS-ROADS, PITTSYLVANIA COUNTY.

The contestant asserts, (1) that the votes of many legal voters, who were supporters of the contestant, were rejected at the precinct of Hall's Cross-Roads, in Pittsylvania County, although they held their tax receipts in their hands when they offered to vote; (2) that the votes of many others were rejected because their registration had been transferred to Malmaison instead of Hall's Cross-Roads, although these two names were, and were known to the judges to be, different names for the same precinct; and (3) that separate boxes were used at this precinct to receive the ballots of white and colored men; and he demands the rejection of the returns of this precinct as fraudulent.

On the first of these points the contestant offers no proof. On the second he presents the testimony of four witnesses tending to show that two votes had been rejected for the reason assigned in the notice of contest, and two for other reasons. But the contestee presents the testimony of twelve witnesses who show that the four votes were rejected because the men who offered them had not been registered according to law, or had not been properly transferred; that no discrimination was made between the voters; that the same questions were propounded to every man, white and colored, in regard to his qualifications; that no voter of either party or color was improperly refused or needlessly impeded in the exercise of his privilege; that the election was conducted with perfect impartiality, and that the contestant's principal witness, on more than one occasion and to several persons, admitted its fairness.

The testimony shows that two boxes had been used since the period of reconstruction, without objection from any source.

There is no statute which expressly, or by necessary implication, forbids the use of two boxes in that way. The only question is whether their use interfered with the purity, freedom, or convenience of the election. That it did not is incontestably proven by the testimony.

CASCADE PRECINCT, COUNTY OF PITTSYLVANIA.

The contestant insists that the returns from the precinct of Cascade, in the county of Pittsylvania, are to be rejected, because one of the judges of election was detected in the act of substituting ballots in favor

of the contestee in place of ballots delivered to him in favor of the contestant.

In support of this claim he offers the deposition of a witness, who says:

Q. 3. Did you see on that day any one of the judges of election suppress a colored voter's ballot and substitute in the place of it another ballot which the colored voter had not given him? If you did, give the name of the judge who did so, and relate the occurrence fully.

(Objected to as suggestive.)

A. Yes, sir; Mr. James E. Adams was the judge who did it. I saw a colored man give Mr. Adams his vote and Mr. Adams held it in hand and changed it for a Democratic ticket, and put the Democratic ticket in the ballot-box.

Q. 4. What was the name of the colored voter?—A. I don't know what his name was.

Q. 5. Did you make any outcry about it at the time? State what you did and said about it.—A. Yes, sir. Mr. Adams handed the Democratic ticket to Mr. Earles to put in the box, and I said then to them, "That ticket is not voted." Mr. Earles then said, "You are too late," and let loose the ticket, and shoved it down into the ballot-box.

This statement is disproved by the testimony of four witnesses, two of whom testify as follows:

JAMES H. ADAMS:

Q. Jesse Strange, one of the supervisors of election at Cascade, has stated, in a deposition given in this cause, that you, James E. Adams, took a ticket from a colored voter, and substituted for it a Democratic ticket, and that Mr. Earles dropped it in the box instead of the ticket handed in by the colored voter. Is that statement true or not?—A. It is not true; nothing of the kind occurred.

U. W. EARLES:

Q. Were you present on the 2d day of November, 1880, at the election held on that day at Cascade? If yes, what connection, if any, had you with the election?—A. I was present on said day, and was one of the judges of the election.

Q. Was that election fairly conducted, and all persons legally entitled allowed to vote?—A. The said election was fairly conducted, and all persons legally entitled allowed to vote.

Q. Jesse Strange, one of the supervisors of election at Cascade precinct on said day, has stated in a deposition given in this cause that James E. Adams, one of the judges, took a colored man's ballot and substituted for it a Democratic ticket and handed it to you, and that you put it in the ballot-box. Is that true or not?—A. It is not true.

RINGGOLD PRECINCT, PITTSYLVANIA COUNTY.

The contestant demands the rejection of the returns of the precinct of Ringgold, in the county of Pittsylvania, on the grounds (1) that separate ballot-boxes were used for white and colored voters; (2) that many votes offered for the contestant were rejected by the judges of election on the pretext that the voters had not personally paid their capitation tax, which pretext, he says, was furnished by the peculiar form in which the county clerk, by the advice of the friends of the contestee, drew the tax receipts; and (3), that one of the judges of election was seen to place the ballot of a voter in his pocket instead of the ballot-box.

This demand for the rejection of the entire return is made twice in the notice of contest and no other relief in connection with this precinct is then suggested. The vote stood for Cabell 242, and for Stovall 238. The rejection of the return would, therefore, yield to the contestant a gain of four votes.

The use of two ballot-boxes affords no valid ground for the rejection of this return.

But the contestant asserted, in argument, that 28 votes were illegally rejected on the pretext that the taxes of the electors had not been paid by themselves, and he claimed 28 additional votes on that account. If this claim, being established, could possibly change the result, while we might not be able, without difficulty, to reach a unanimous conclusion that no votes were illegally rejected on the ground alleged, we should be compelled to report that so many as 28 votes were not so re-

jected. But in view of the fact that the concession of all these votes to the contestant would still leave the contestee a majority of 831, and of the obligation which, if this change be made, will constrain us, for still stronger reasons, to exclude the vote of Shockoe precinct, where the contestant had a majority of 65, and thereby raise the contestee's aggregate majority to 896, we have concluded not to disturb the returns of either of these precincts.

The charge that one of the judges placed the ballot of a voter in his pocket is completely disproved. And if it were, that fact would not authorize the exclusion of the entire vote of the precinct.

The contestant, in his brief, presents a demand, connected with the claim of 28 votes just considered, to which no reference is made in his notice of contest. It is a demand that 175 additional votes, including the 28, be allowed him in the entire county because refused on the ground that the electors had not paid their own taxes. He says—

(1) That he has proven that "28 votes at this precinct were unlawfully rejected because of the manner in which the receipts for the capitation tax were written"; (2) that Sheriff Overby testified that "these receipts were issued to the number of 150 or 200 colored men" for the entire county; and (3) that inasmuch as one of the Ringgold judges of election had *said* that Judge Aiken, of Danville, had *said* that these receipts were unlawful, it was to be inferred that 150 or 200 votes offered for the contestant in Pittsylvania County were unlawfully rejected because of the form of the capitation-tax receipts. And thereupon, without proof of the offer and rejection of these 150 or 200 votes, and without any averment to that effect in his notice of contest, he seeks to appropriate the average of 150 and 200—that is to say, 175 votes.

It is obvious that we could find no excuse for complying with a demand resting on such shadowy grounds. There is no legal evidence of the alleged facts. Hearsay and inference cannot be substituted for proof.

BROSVILLE PRECINCT, COUNTY OF PITTSYLVANIA.

The contestant asserts, in the notice of contest, that at the precinct of Brosville, in the county of Pittsylvania, many illegal votes for the contestee were received, and many legal votes for the contestant rejected.

He asks for no relief. The testimony completely disproves his averments. There is not the slightest reason to interfere with this poll.

DOUBLY REGISTERED VOTERS IN PITTSYLVANIA COUNTY.

The contestant, in his brief and argument, claims 550 additional votes in the county of Pittsylvania, on the ground that 550 of his supporters, who were registered, each at two or more precincts, were not permitted to vote. This demand is not suggested in the notice of contest and therefore cannot be considered by us, and if it were necessary would be rejected for that reason, nor is it sustained by the proofs.

The proof on which this claim is based is found in the following testimony of James Wood:

Q. 26. You are shown a copy of the Daily News, a paper published in Danville, Va., and the copy shown you, dated Tuesday, November 2, 1880. It contains what purports to be a letter from Attorney-General Field, of Virginia, in answer to a letter addressed to him by Mr. E. A. Catlin, Democratic supervisor of election, held on that day. In that issue of that paper, and in the article professing to recite Attorney-General Field's letter to E. A. Catlin, as above, occurs the following: "Answer to second question: Any person's vote may be objected to on the day of election, and if it shall appear that his name is improperly on the registration books his vote should be rejected. If it appears that a person has registered at two places in the same county, without a transfer, his vote should be rejected." *Did not the Democratic supervisor and challenger at that election, November 2, 1880, act upon that opinion as if it had read that the same name appeared at two precincts without reference to the identity of the person?*—A. *That was my understanding of their ruling.*

Q. 29. *If the construction put upon Attorney-General Field's letter above quoted by the Democratic supervisors and challengers of Danville had been generally acted upon at every*

precinct in Danvill; and in Pittsylvania County, how many colored voters, in your opinion, would have been disfranchised in Danville and Pittsylvania County at that election?

(Objected to, as calling for the mere opinion of the witness upon a purely hypothetical case, which is not evidence, and for an opinion which has about as much bearing upon this case as if, instead of Pittsylvania, it had been asked with reference to Babylon.)

A. *In my opinion it would have disfranchised a large number, probably five or six hundred.*

This witness, it appears, "understood" that at one of the 30 precincts of Pittsylvania county every person who offered to vote in a name which was registered at two precincts was denied the right, even when there were two different voters of the same name and he is of the opinion that if the same thing was done at each of the other 29 precincts, then probably 500 or 600 colored men were disfranchised in the entire county.

We should not feel warranted in allowing the contestant any additional votes upon this proof at the particular precinct to which it refers, even if the pleadings permitted him to claim them. But if it be true that the judges at the Court-House precinct in Danville placed upon the attorney-general's letter the erroneous construction which the witness understood them to place upon it, we are not at liberty to assume, without proof, that the judges at the other 29 precincts misinterpreted the letter in the same way. Nor, assuming it to be true that the same erroneous construction was placed upon the letter in all the precincts of the county, can we receive the *opinion* of this witness as proof of the fact that it caused a disfranchisement of 500 or 600 colored voters in the county. It does not appear that expert testimony from this witness is admissible to establish that fact. But if the fact were established, we could not, upon this record, assume or conclude that the 500 or 600 disfranchised colored men were all supporters of the contestant. There is no proof to justify contestant's demands.

The census of 1880, showing the population of Danville to have been 7,526, satisfies us that the establishment of this claim by proof was an impossibility. For if of these 550 disfranchised colored men 328 were, as the contestant asserts, voters of the town of Danville, then the voters of that town numbered about 1,983, and constituted more than 26 per cent. of the entire population. By the ordinary rule, reckoning the population of Danville at even so much as 8,000 on 2d November, 1880, there could hardly have been over 1,600 voters if all were qualified according to law. The proof shows that 1,324 persons voted at Danville on 2d November, 1880; that 311 persons were disqualified by non-payment of tax and conviction of crime, and therefore did not vote, making 1,635, which accounts in a satisfactory way, it seems to us, for the voting population of that town. If, however, we were to adopt the views of contestant, and add to the 1,635 voters found above 328, which he claims were prevented from voting for him, and some ten or twelve more who are shown by the testimony to have desired to vote for contestee, but were prevented by the crowd from doing so, we would find ourselves confronted with the fact that there were in Danville on said 2d November, 1880, about 1,983 voters out of a population of less than 8,000, a majority of whom, according to the census returns, were females. The fact is, the vote at Danville on the day named was quite a full vote, the population and other facts considered.

PETERS'S CREEK, NUNN'S STORE, GATES'S STORE, PATRICK COUNTY.

The contestant asserts in his notice that at the precincts of Peters's Creek, Nunn's Store, and Gates's Store, in the county of Patrick, the judges of election opened the ballot-boxes during the progress of the

election, and examined and counted the votes contrary to law, and he demands that the returns of these three precincts be rejected by the House of Representatives.

But he has offered no proof in support of this charge, except as to the precinct of Gates's Store. He produced two witnesses to impeach the returns of this precinct. Their testimony completely refutes the charge instead of proving it.

But if that were not so, their depositions are not admissible in evidence, because, like the rest of the contestant's Patrick County depositions, they were taken before the county clerk, who had no lawful authority to take them, and the contestee objected before they were taken.

CHARITY PRECINCT, PATRICK COUNTY.

The contestant, in his notice of contest, asserts that the county canvassers of Patrick County illegally rejected the returns of Charity precinct, and demands that the returned vote of this precinct be counted.

But his own proof shows that the only return made by the judges of election of the precinct was a return of the vote for electors of President and Vice-President, which return wholly omits the votes cast for the Republican electoral candidates. It shows that the judges of election made no return at all of the vote for Representative in Congress. The omission of the county canvassers to canvass votes *not returned* was not illegal. On the contrary, the canvass of votes not returned would have been a lawless proceeding.

If it were true, as the contestant asserts in his brief, that 51 votes were cast for the contestant, and only 20 for the contestee, at this precinct, the contestant might have availed himself of the net result by proper averments in his notice, duly supported by legal proof. But he made no such averments. His only averment was that the county canvassers *illegally rejected* the return; and that averment was not true. Nor is the testimony taken on the subject before the county clerk admissible.

CARROLL COUNTY.

The contestant, in his notice, demands the rejection of the entire vote of Carroll County. But there is no proof to justify any modification of the official returns from this county.

SHOCKOE PRECINCT, PITTSYLVANIA COUNTY.

The contestee, in his answer, demands the rejection of the vote of Shockoe precinct, in Pittsylvania County, where the contestant received as reported a majority of 65 votes. We might well exclude this precinct from the count by reason of the wrongful and illegal conduct practiced by friends of contestant at that point, but for reasons already suggested we have concluded not to disturb the return, as we can, after thorough examination of all the facts and circumstances connected with the election in the fifth Congressional district of Virginia, on 2d November, 1880, sustain the contestee, George C. Cabell, in his position by at least his returned majority of 859 votes, and report the accompanying resolutions:

1. *Resolved*, That John T. Stovall was not elected to a seat in the Forty-seventh Congress from the fifth Congressional district of Virginia, and is not entitled thereto.

2. *Resolved*, That George C. Cabell was duly elected to a seat in the Forty-seventh Congress from the fifth Congressional district of Virginia, and is entitled to represent the same.

ANDERSON vs. REED.

JULY 18, 1882. Ordered to be printed.

Mr. G. C. HAZELTON, from the Committee on Elections, submitted the following

REPORT:

The Committee on Elections, to whom were referred the papers relating to the contested election case in the first Congressional district of Maine, having had the same under consideration, submit the following report:

The testimony in this case shows from unquestioned facts that the contestee received 123 more votes than the contestant.

This plurality the contestant seeks to overthrow by three separate allegations:

First. That some voters were bribed to vote the Republican ticket.

Second. That certain voters were allowed to vote who had no right so to do, and certain voters were refused the right to vote who were really voters.

Third. That there was intimidation which prevented the expression of the real voice of the people of the district.

Taking these allegations in their order, we find the facts to be as follows:

First. As to the charge of bribery, no suggestion or intimation is made of any complicity or even knowledge on the part of the sitting member.

Whoever was bribed, voted for the member of Congress simply because his name was on the general ticket. The number of cases alleged by the contestant seem to be but seven, of which one is proved by the statements of the man bribed, which are not contradicted. The rest are in dispute and rest on rather vague evidence.

Second. As to the charge of admission and rejection of voters. In order to understand the bearing of the testimony it is necessary to understand the law of elections of the State of Maine. By section 25, chapter, 4 of the revised statutes of that State, it is made an essential prerequisite to the right of voting that the voter's name shall be on the check list, which is the registry of the names of voters. These check lists are made up in different ways in municipalities of different sizes.

In cities, the general law is that the aldermen shall be in session, open to all, for six days before the election, which takes place on Monday, to revise the lists which are made out for each ward by assistant assessors, who go from house to house.

After the assistant assessors have made their lists from the best information they can get, they post the names in alphabetical order in front of the ward rooms and in other public places, so that the voter

prior to the open sessions of the aldermen may scan the list and see if his name is on it. During the six days those whose names are omitted or incorrectly on appear, and the needful corrections are made.

The lists thus revised and corrected are sent to the different wards, and as the voter comes to the desk his name is checked, and he votes. If his name is not on the list he cannot vote. In towns having one thousand or more registered voters the selectmen sit for three days to correct the lists.

In towns of between five hundred and one thousand voters the board sits one or more days.

In towns of less than five hundred voters, the selectmen correct the list before the polls open and during the entire day. All these different sessions are open and public.

The contestant claims that a number of voters voted for Reed who had no right to, and another number who would have voted for Anderson were not allowed so to do. These numbers if added together he claims would overcome the 123 plurality.

It is to be observed in regard to all these cases that there are no allegations of fraud or willful wrong, only that the selectmen erred in judgment. It is an appeal from those who, especially in the towns, were perfectly conversant with the status of every voter to Congress, on evidence taken in depositions.

The nature of some of this evidence may be inferred from the following extracts from contestant's brief:

At Falmouth, it is both affirmed and denied that Dayen, Stone, and True, who voted for Reed, were non-residents or paupers, and that the votes refused to Anderson of Murray, Reynolds, and Black were lawful ones (pp. 131 to 133, and 206-7, 215-17, and 293-4). The officials to decide were partisans of Reed.

At Standish, McKenzie, a non-resident, voted for Reed. Cotton voted for Reed, and says he was not bribed (p. 291); though his father supposed it to be an admitted fact that he was (p. 150). Merrill, of Washington, voted for Reed at Brighton, where his residence is both denied and affirmed (pp. 160-1-2 and 315, 348, 364).

At Westhook, the evidence sharply conflicts as to the right of Hoegg and others to vote for Reed (pp. 117 and 249-50).

At Otisfield, Pike and McNeil voted for Reed. It is positively affirmed and denied that they were non-residents (pp. 51 and 330-3-5).

At Gorham, Ney, Rowe, and Shaw, non-residents, voted for Reed (p. 163). And Bacon and Hall's votes refused to Anderson (p. 162). An *attempted* explanation will be found on page 297. Ney's name was added on election day; and a witness says Hall admitted he was not a voter (p. 222).

These examples will be found on pages 10 and 11 of contestant's brief.

An examination of the testimony will show that every case is a disputed one which has been settled on testimony more or less conflicting by men who, as selectmen of the town, were thoroughly familiar with all the facts, and in the open town-meeting, in the presence of men who also knew all the facts. To overrule such decisions in the absence of any suggestion whatever of bad faith would need something more than conflicting evidence. There was another class of cases in Portland where it does appear that a small number of voters lost their rights because of a failure to look after their registry. But this is shown on both sides, and was evidently the result of carelessness on the part of the voter and such accidents as must occur in a registry of more than 7,000 votes.

It should be added that cases of similar proof were shown on the part of the contestee both as to the class of omitted voters and as to the cases of bribery, but we have not deemed it necessary to particularize, because the contestant on the testimony does not make out his own case.

The contestant points out the fact that in Portland two to one of his

supporters were put on the lists by the aldermen, which indicates that they were left off by the assistant assessors, and therefore, he says, the omission was intentional. But when the fact is borne in mind that in the wards of floating population, where most of these names are put on, the Democratic vote is more than two to one, the omission proves the very contrary, and is just what might have been expected.

Third. As to the chance of intimidation, the evidence falls far short of substantiating the charge. It consists mostly of hearsay and rumors, and does not disclose a single instance of violence or even threatened violence. A common report "that men would lose their job" if they did not vote as their superiors directed, and the testimony generally referred to in contestant's brief, pp. 4 and 5, hardly constitute such an overthrow of men's wills and determinations as can be taken notice of by the law.

Your committee therefore recommend the adoption of the following resolutions:

Resolved, That the contestant, Samuel J. Anderson, was not elected, and is not entitled to his seat in this Congress.

2. That Thomas B. Reed, the contestee, was elected, and is entitled to retain his seat in this Congress.



NICARAGUA CANAL.

JULY 21, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. KASSON, from the Committee on Foreign Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6799.]

The Committee on Foreign Affairs, to whom was referred the bill H. R. 4245, together with various petitions and memorials from citizens and boards of trade in the States of California and Oregon, and of various officers of States and of cities, have had the same under consideration, and beg leave to report the bill back to the House with sundry amendments in the form of a substitute, the adoption of which is recommended.

The committee have heard the evidence, statements, and arguments of various persons, experts and others, practically acquainted with the requirements of navigation and with the proposed route of the Nicaragua Canal, and have given careful attention to the same.

THE IMPORTANCE OF THE PROPOSED WORK.

There is probably little necessity for urging upon the House the utility of a shorter water route of communication with our western coast, with the Pacific coast of Central and South America, and with the islands and farther shores of the Pacific Ocean. To reduce the distance from the seaports of the Atlantic to those of the Pacific coast by abolishing the entire circumnavigation of the South American continent is so manifestly important as to require nothing more than a statement of the purpose to secure its approval. The project of thus abbreviating the distance for the benefit of the commerce, and for the advantage of the political interests of the United States, has been before the country for many years, and has been supported by every administration and by public opinion. The United States have always insisted that their profoundest interests were involved in the accomplishment of the work under conditions satisfactory to this government. Its importance to the commerce of other nations, particularly of England, has induced the latter government to make strenuous exertions for securing rights therein, and a part of the control thereof. The arrangements made between the two governments by the treaty of 1850 proved to be utterly ineffective for the accomplishment of the work. The relative interests of the two countries in the question have been so far changed by the development of our agricultural and commercial interests on the Pacific coast, as to vastly increase the interest of the United States in the enterprise and to make it indispensable that the political and commercial control of the United States over the work should be secured beyond doubt or question.

The wealth of the country has so enormously increased as to put it entirely within the power of the people of the United States to accom-

plish the work with promptitude, and without such foreign aid as was contemplated thirty years ago.

THE DIFFERENT TRANS-ISTHMIAN ROUTES AND THE DISTINCTIVE ADVANTAGES OF THAT OF NICARAGUA.

There have been ten different surveys and examinations of proposed routes across the Isthmus, executed under the authority of the United States Government, during the last quarter of a century. Without entering into their details, your committee contents itself with the conclusion arrived at in 1876 by a commission assembled by authority of the United States, composed of the highest engineering authorities. In that report the commission declares that the Nicaragua route—

Possesses, both for the construction and maintenance of a canal, greater advantages and offers fewer difficulties from engineering, commercial, and economic points of view than any one of the other routes shown to be practicable by surveys sufficiently in detail to enable a judgment to be formed of their relative merits.

The evidence of engineers and experts submitted to your committee tends to confirm that judgment of this commission. Your committee therefore confines its observation upon the question of the various routes to that one in the State of Nicaragua, which has been admitted by foreign as well as domestic engineering authorities to possess the greatest advantages for the construction of an interoceanic water-route. Nature, on the Nicaraguan route, has herself accomplished a large portion of the work necessary to establish such interoceanic communication. A remarkable depression of the great Cordillera chain of mountains—the lowest on either American continent—is found here on the summit of land between the two oceans. While one peak of this chain rises there to the height of 6,000 feet, this peak is surrounded by a fresh-water lake, the depth of which in places approaches the ocean level. The western shore of this lake is separated from the Pacific Ocean by a distance, in a direct line, of 12 miles, and by the proposed line of canal by a distance of only 17 miles. Its eastern shore, on the other hand, is separated from the waters of the Atlantic Ocean by a distance, in a direct line, of about 75 miles, and by the line of the proposed canal by a distance of 99 miles. But, on this side, the River San Juan, forming an outlet of the lake into the Atlantic Ocean, furnishes a natural water-route requiring only partial improvement for the distance of 63 miles, leaving for original canal excavation on this side a distance of only 36 miles. The total distance therefore, between the two oceans, of original canal excavation is 53 miles. The total elevation to be overcome by lockage between the two oceans, covering the entire distance of 173 miles, is only the elevation represented by the difference between the level of the Potomac River at Washington and the floor of the House of Representatives. The deepest cutting through the Cordillera is 41 feet above the lake level, and is not long.

The admirable conditions existing on this proposed route are best indicated by the fact that there will be uninterrupted navigation on the summit level, without a lock, for a distance of about 130 miles, of which 120 miles are lake and river alone.

From the Pacific Ocean eastward to the point where the canal leaves the river for Greytown the sanitary conditions are remarkably good, and perhaps the best existing in any part of Central America.

That portion of the navigation which will be furnished by the river San Juan presents a minimum breadth of channel of about 450 feet, to be enlarged by the proposed work to not less than 600 feet, while the general breadth of channel will vary from 800 to 3,000 feet.

The great natural basin of pure fresh water, covering an area of 3,500 square miles on the summit-level, presents advantages that cannot be easily overestimated.

This and the river navigation will greatly facilitate the transfer of vessels from ocean to ocean by the absence of all necessary detentions of meeting vessels in small artificial basins, while it also permits navigation at full speed.

Your committee calls special attention to the advantages of this lake as a salubrious station where in the future development of commerce ships of all nations may be accommodated for repairs, supplies, and all temporary relief required in the progress of long voyages across the Atlantic and Pacific Oceans, while iron vessels may repose in safety and without injury in the sweet waters of the lake.

RELATIVE COMMERCIAL ADVANTAGES.

In relation to the advantages this route will afford to the commerce of all nations in common, it presents for our commercial interests certain special advantages which impress themselves strongly upon the mind of your committee.

By the route around Cape Horn the advantage of distance and time are exclusively with European commerce. Sailing from European ports, ships go with directness past the eastern points of South America to the Cape. Vessels sailing from our American ports, on the contrary, are obliged to sail far to the eastward, and then return to the westward from the points where they intersect the direct line of European navigation around Cape Horn, thus losing greatly in distance.

The completion of the Nicaraguan water-route will reverse the international conditions referred to. It will give an almost direct route southward from the American ports, while the distance added to European navigation will be nearly equal to the distance from the American to the European ports, and this, whether the destination be the Pacific coast of North or South America, or the islands and Asiatic shores of the Pacific Ocean.

TRAFFIC AND REVENUE.

In relation to the amount of probable traffic that would seek this route, were it once opened, it does not seem necessary to present elaborate tables. The various board of trade reports of the cities on our Pacific coast show an enormous grain production for export, quite sufficient in itself to warrant the construction of the canal. Last year the grain for exportation amounted to over 1,500,000 tons. The vessels engaged in its transportation would almost without exception make a double transit, say with a freight tonnage of half this amount. With a supposed coasting trade of only 1,000,000 of tons in addition, the traffic named would amount to 3,250,000 tons in which we are directly interested. With the opening of this highway our trade would naturally grow up on the west coast of South and Central America, as well as beyond in the adjacent waters.

We need not regard the construction of the canal commercially other than as subserving our own interests. At the same time it would prove of vast utility in the great traffic of the globe other than our own, and the canal would derive a large additional revenue from that source.

It appears that in the last half of 1881 seventy American ships sailed from the Pacific ports grain laden, the smallest cargo having been 1,270 tons and the largest 3,300 tons in weight; but the whole number sailing

so laden was 303, of all nationalities, and carrying cargoes up to 4,000 tons each. This magnificent fleet sailed around Cape Horn for European ports, a distance of 13,710 miles, whereas, had the canal been open, the distance would have been 7,200 miles, a loss of 6,500 miles in sailing distance for each vessel, and an aggregate loss of 1,969,500 miles, an expense the wheat-growers of the Pacific slope have in large part suffered.

The committee have arrived at the conclusion that an estimate of 3,000,000 tons of freight annually, availing itself of the Nicaragua route from the time of its completion, may be safely adopted. The data from which this estimate is made will be found in the statement and tables added as an appendix to this report. At the rate of \$2.50 per ton for all charges in the canal, the annual revenue upon the estimated tons of freight would very far exceed the liability proposed by the guaranty of the United States. In fact, assuming a guaranty of 3 per cent. upon a total cost of \$75,000,000, and under a limit of expenditures for management and maintenance of \$1,000,000, it only requires the passage of 1,300,000 tons of traffic annually through the canal to wholly relieve the United States Government from its guaranty. The committee have therefore no hesitation in recommending the proposed guaranty of 3 per cent. upon the amount reduced from that named in the bill referred to them to the maximum of \$75,000,000. This guaranty takes effect only upon the completion of the canal, the United States assuming no pecuniary responsibility of any kind during its construction, and is to continue for twenty years. The bill excludes all liability on the part of the United States for the principal.

THE PROPOSED ORGANIZATION FOR THE CONSTRUCTION OF THE CANAL.

In view of the treaty entered into between the United States and Nicaragua in 1867, which contemplated the opening of the route, certain enterprising citizens of the United States believed the time to have arrived when a company could be organized and the money obtained for the completion of the work. The movement advanced so far towards success that, in 1880, a representative of those American citizens completed their negotiation with the Government of Nicaragua, and entered into a contract with that republic, by which not only the rights and interests of Nicaragua were protected, but a liberal concession was made to the provisional company, under which they were willing to undertake the important work proposed.

This concession has been carefully examined by the committee, and they believe the same to furnish the proper authority and conditions for the successful prosecution and completion of the enterprise. The provisional company which obtained this concession, after consultation with leading representatives of great business interests and capital, have agreed upon the means proposed in the bill for the initiation of the company which is to procure the capital and carry on the work to completion.

THE PROVISIONS OF THE BILL REPORTED BY THE COMMITTEE.

The bill reported by your committee has two leading objects. The first is to regulate the organization of the company and secure to it a proper legal status, giving alike security to the public interests on the one hand, and proper protection for the private wealth which must be

contributed for the successful accomplishment of the work on the other. The other object is such reasonable financial guarantee on the part of the United States Government, as shall give confidence to the subscribers of the capital required, and shall not exceed what is due from the great commercial and political interests of the United States involved in the enterprise.

It is proposed to secure the first object mentioned by the usual provisions regulating the organization of such companies, only so far as modified to secure the stipulated rights of the Governments of Nicaragua and of the United States, and securing to the stockholders the management of the enterprise to which they devote their energies and their money, with assurance of a moderate minimum income from their investment. The capital stock is limited to a minimum of \$50,000,000, and a maximum of \$100,000,000. The subscription is open to all, and a percentage of the subscription is to be paid at the time of making it, to guarantee its integrity. They are allowed to maintain such rates of charges, not exceeding the maximum provided by the bill, as shall earn 10 per cent. upon the capital invested. The guarantee by the United States is a minimum of net earnings of 3 per cent. upon an assumed cost of construction of \$75,000,000. Your committee has adopted the latter sum as the basis of guarantee by the United States, in lieu of the \$100,000,000 proposed by the original bill, after a careful consideration of the probable cost of the completed work. Should the actual cost of construction prove to be less, the United States guarantee is to be limited by such actual cost.

When we remember the vast and permanent importance of the construction of this water-route, the relative economy of the proposed guaranty for the accomplishment of this work, which will be so beneficial to the commercial and political interests of the United States, cannot fail to impress itself upon the House.

The proposed route will not only cheapen vastly the transportation of agricultural products which cannot be transported by rail, but, as a rival line of transit for travel and traffic, will have the effect to reduce largely the existing charges for general transportation.

But your committee, after the most diligent inquiry, cannot entertain a doubt that from the beginning of the operation of the canal the proposed guaranty will create no draft upon the United States Treasury. After rejecting all questionable elements of revenue there remains an assurance of income from reasonable charges amply sufficient to realize the minimum amount guaranteed by the United States. The beneficial effects, the importance of which justifies the proposed guaranty, are the assurance it gives to the contributors of private capital of a fixed return upon their investment, and of the continued protection of the enterprise by the government whose citizens they are. In our opinion it is not too much to ask of the government, in view of the importance of the enterprise to all our national interests, even were it less evident that the Treasury of the United States would not be called upon for a deficiency of earnings.

The elements for the protection of the public interests which your committee recommend in the bill are believed to be sufficient. Provision is made for periodical returns to the Secretary of the Treasury of the earnings and expenditures of the company, and for a director to be appointed by, and to represent the interest of, the United States. No indebtedness and no interest thereon is to be paid except out of the balance of the earnings above the 3 per cent. which the United States guarantee.

There is also a limitation upon the amount of expenses of management and maintenance which may be allowed out of the earnings of the company to which the guarantee applies.

Charges are to be reduced whenever the net earnings exceed the limitation proposed by the bill. It is further provided that the United States shall have all control over the canal which is now or may be conceded by treaty with Nicaragua, and shall enjoy its free use for transportation of troops, munitions of war, and mails, and otherwise, with the additional right to take possession of it, so far as is consistent with the rights of Nicaragua, subject to the liability in such case to pay 5 per cent. upon the capital invested, together with the necessary expenses of the maintenance of the work.

Your committee has believed it to be expedient to further amend the bill submitted to them by enlarging the dimensions of the canal and locks as stipulated in the concession made by the Government of Nicaragua. In view of the increasing size of commercial vessels it was deemed important to require a depth of water (28 feet) equal to the greatest available depth on the bar of the harbor of New York. The locks are enlarged to 600 feet in length. While this amendment will increase the cost of construction beyond the amount estimated under the requirements of the concession, the construction may nevertheless be accomplished, in the opinion of the committee, for \$75,000,000. This opinion is based upon the extraordinary facilities for conducting the work of excavation in the alluvial district, and by the great natural advantages presented by lake and river.

Full right to alter and amend the act is reserved to the Congress.

CONCLUSION.

Your committee are firmly convinced that the national welfare and commercial interests of the United States urgently require prompt action on the part of Congress upon the measure in question. The government subjects itself to criticism by longer remaining in the attitude of objecting to the opening of an interoceanic canal under other national auspices while it refuses to secure it under its own. If not done under the protection of this government, an attempt will be made to accomplish it under the open or implied protection of another. If the United States will not themselves provide for the work, it will be claimed that they cannot with justice present themselves as an obstacle to the action of those who are ready to execute it.

Our domestic condition is now unusually favorable to American enterprise in this direction. Public interest is specially awakened to its importance. Money is abundant and seeking at low rates of interest secure investments. Labor can be obtained at reasonable cost; and improved machinery greatly diminishes the necessary expenditure. Private capital is ready for the work as it has never been before.

The benefits of the work to the United States, both near and remote, have never been so patent as they are now.

Your committee hope that these considerations will induce Congress to give its prompt and favorable attention to the report of the committee.

APPENDIX.

Estimated receipts and expenditures of the Nicaragua Canal when completed.

An inquiry as to what the earnings probably would be should be answered; as also should one as to the sufficiency of \$1,000,000 to meet the yearly expenses of a canal.

Mr. Nimmo, chief of the Bureau of Statistics in the Treasury, in answer to a resolution of a committee of the House of Representatives, prepared a valuable paper upon the probable tonnage then offering for passage through a ship canal across the American isthmus. It is the most authentic statement existing upon the subject. There are certain influences, not of a legitimate character, operating to divert certain of the carrying trades of which he treated to channels to which he in consequence assigned them, but of which influences he was not cognizant. Correcting his statement by transfers as appears necessary from this cause, and adding to it for the increase in grain production on the Pacific slope, his showing is made reliable for the trade existing at the present time that might pass through a canal were there one in operation.

After making sundry deductions from the whole tonnage, he found the amount to be 1,625,000 tons. The great increase in grain production on the Pacific side would now increase the amount by at least 600,000 tons, that item in his estimate being included in an amount of 550,000 tons, (4) while the total grain produced for shipment in 1880 reached 1,500,000 tons. Considerable of the trade of the southwest coast of South America, credited by Mr. Nimmo to the route via Cape Horn, would seek a transit over the isthmus, if not too far north.

The carrying capacity of sailing vessels exceeds their registered tonnage by 30 to 40 per cent., and that of steamships also largely exceeds their registered tonnage.

These facts taken into account, the following results are obtained:

	Tons.
Amount of tonnage found by Mr. Nimmo.....	1,625,000
Add for increase in grain products.....	600,000
Add tonnage from coast of South America.....	500,000
Total registered tonnage.....	2,725,000
Add for capacity in excess of registered tonnage, 25 per cent.....	681,250
Number of tons liable for tolls.....	3,406,250

To adopt 3,000,000 tons is, in all probability, an underestimate for the trade now awaiting a canal at Panama or Nicaragua.

A charge of \$2.50 per ton on that business would produce a gross amount of \$7,500,000, a sum greatly in excess of that required to secure 3 per cent. on the capital shares.

There arises the possibility of the Panama Canal being completed. In such an event what would probably be the trade of the Nicaragua Canal?

To rightly estimate for this condition the difficulty of approach for sailing vessels, the chief carriers of the great grain crops of California, to either entrance of the Panama Canal; the extreme difficulty of keeping open so deep a cut; the dangers in its navigation, because necessarily very narrow; the delays for meeting vessels, and the greater distance from our Pacific ports, are all points that should be considered, as they are influences that would favor Nicaragua; and there is still another greater advantage to its credit in the comparatively small tolls required to pay a return upon the smaller investment.

Estimate of the tonnage that would pass via Nicaragua Canal in preference to one in operation at Panama, as derived from Mr. Nimmo's tables, with an addition, as before, for the increase in the grain trade:

	Tons.
(1) Trade between New York and ports in Central America and our Pacific ports, via Panama.....	60,735
(2) New York and San Francisco, via Cape Horn.....	120,682
Estimated increase.....	130,000
(3) New York and Mexico, Honduras, Hawaiian Islands, China, Japan, and half the Australian trade.....	270,277
(4) Pacific ports and foreign ports in the Atlantic Ocean, including grain carriage.....	1,200,000
(5) European ports with Central America.....	52,389
(6) European ports with New Zealand, via Cape Horn.....	237,851
(7) European ports with British Columbia.....	22,331
Total tonnage.....	2,094,245
Add 25 per cent. for carrying capacity.....	523,561
Probable tonnage for tolls.....	2,617,806

At \$2.50 per ton canal charges the extreme amount of business requisite to earn the guaranteed 3 per cent. net gains would be 1,300,000 tons, or an amount one-half that shown in the above estimate.

From this it is manifest that the United States cannot incur, in any event, a serious liability through adopting the proposed measure.

In estimating the yearly expenses of the Nicaragua Canal, which, exclusive of locks, will be $51\frac{1}{2}$ miles long, no allowance will be made for dredging, as the water used throughout will be taken from the lake and no surface drainage admitted to deposit silt.

The anticipated cost of management, maintenance, and operating the canal is derived from the following data:

SUEZ CANAL.

This canal is 100.15 miles long and cost \$92,273,907. Vessels are towed throughout. The yearly expenses are now about \$834,000.

For the year 1878 they were \$882,505, made up as follows:

Expenses for general administration in Paris	\$164,366	
Agencies and administration in Egypt	58,300	
		\$222,666
659,161 cubic yards dredging outside of and within the basin, Port Said Harbor, at 15 cents	98,874	
982,920 cubic yards dredging in canal, at 15 cents	147,438	
		246,312
Other expenses for maintenance and repairs	109,270	
For operating the canal, including pay of employés, towage, tow-boats, materials, tools, lights, repairs, &c	304,257	
		413,527
Total expenses		882,505
Deduct for dredging		246,312
		636,193
Total expenses, exclusive of dredging		636,193

This rate of expenditure for a canal $51\frac{1}{2}$ miles in length would amount to:

Expenses for $51\frac{1}{2}$ miles of canal, no locks	\$327,639
Add for 12 locks, at \$20,000 each	240,000
Add for harbor expenses, same as at Suez	98,874
	666,513
Total pro rata cost for Nicaragua Canal	666,513

The large item charged for the Paris office is due in part to the heavy pensions or life-pays fastened upon the company, Count de Lesseps alone receiving \$25,000 yearly for life. The cost of dredging is estimated, the rate per cubic meter not being given.

The total receipts of the Suez company for 1878 were \$7,315,000, and the expenditures for all purposes were therefore 11.4 per cent. of gross receipts. With a proper rate of expenditure in the Paris office, the total outlay would not have exceeded 10 per cent. of receipts.

LOUISVILLE AND PORTLAND CANAL.

This canal, 2.15 miles long, has two locks 372 feet long and 80 feet wide, with 12 feet and 14 feet lifts. The locks were *worked by hand* in 1879; 3,168 vessels of all classes passed through the canal that year. A tow-boat, a dock, and steam dredges are maintained.

Expenses for 1879 were, less \$12,955.84 for dredging, \$30,928.47. This is at the rate of \$14,453 for one mile of canal and one lock. Taking \$12,000 for cost of operating the lock, there remains \$2,453 per mile for canal.

For $51\frac{1}{2}$ miles of canal this makes	\$126,330
Add for 12 locks, at \$20,000 each	240,000
	366,330
Corresponding amount for Nicaragua Canal	366,330
Add for harbor expenses, same as at Suez	98,874
	465,204
Total for the expenses of Nicaragua Company	465,204

SAINT MARY'S FALLS CANAL.

This canal is slightly over one mile in length. There are two locks to overcome the same elevation, one being the largest in the world. It is 515 feet in length, 80 feet wide, and 18 feet lift. Estimated yearly expense \$25,000.

Assuming the locks to cost \$20,000, the other expenses would be \$5,000 per mile. For the Nicaragua Canal these rates give:

51½ miles canal, at \$5,000 per mile	\$257,500
12 locks, at \$20,000 each	240,000
Harbors as before	98,874
Total for expenses of the Nicaragua Company	596,374

NORTH SEA CANAL.

This canal is 16 miles in length and from 130 to 400 feet in width. The level is below that of the sea. There are two sets of locks of large dimensions and an artificial harbor constructed under great difficulties. The depth, originally made 23 feet, is to be increased to 26 feet by 1884. In 1879 vessels of 23 feet 4 inches draft passed through the canal. The cost of the work was 27,000,000 florins or \$10,800,000.

From November, 1877, to August, 1879, 4,862 vessels passed through the canal. The expenses for operating it in 1877, the only year for which a report has been found, amounted to only \$75,569.45.

As there are two sets of locks and 16 miles of canal, there are eight miles of canal to each lock lift. In Nicaragua, as now projected, there will be something over 4 miles of canal to each lift.

Assuming, as before, each set of locks to cost yearly \$20,000, there remains but \$35,000 to pay all the other expenses of 16 miles of canal and of an artificial harbor in the North Sea. Charging it all to the canal, makes the expenses per mile \$2,185. Then—

Expenses of 51½ miles canal, at \$2,185 per mile, is	\$112,528
Add for 12 locks, at \$20,000 each	240,000
Add for harbor expenses as before	98,874

Total for Nicaragua Canal, pro rata	451,402
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Strictly the item for harbor expenses should have been omitted, as such an expenditure is included in the other amounts.

DES MOINES CANAL.

The canal is 7.6 miles long, has three locks, suitable for the largest steamers on that river, and they are subject to overflow in freshets. The dredging is quite large in amount, yet the yearly expenses are usually about \$30,000.

These results grouped are as follows:

Expenses for Nicaragua Canal, as derived from the Suez Canal expenditures	\$666,513
Louisville and Portland Canal expenditures	465,204
Saint Mary's Falls Canal expenditures	596,374
North Sea Canal expenditures	451,408

The average yearly expenditures thus shown amount to	544,873
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From the foregoing figures, it would appear that the gross earnings, amounting to \$3,250,000, would give a net gain of 3 per cent. on \$75,000,000 capital, and the total tonnage necessary to yield that amount would be but 1,300,000 tons.

On such a business the expenses would be about 15 per cent. of receipts, but a much larger tonnage would involve but little additional cost, as the maintenance, management, and working of the canal and offices would be much the same, save in the one item of towage—not a heavy expense.

It is thus quite evident that \$1,000,000 will more than meet the yearly expenditures of the Nicaragua Canal Company.

Certainly that amount is in excess of what would be required for a tonnage so small as to render the United States in any degree liable in respect of the proposed guarantee.

A statement of the receipts and expenditures of the Suez Canal Company for the years 1878-'79-'80-'81 affords valuable information respecting the economy of artificial water routes for shipping.

SUEZ CANAL.

Cost.—This canal is 100.15 miles long. The deepest cut is 70 feet above sea-level. Total cost, \$92,273,907. For a long period excavation was carried on by human

hands, the dirt being taken out in such quantities as could be laid upon the carrier's back above the arms crossed over it to form a barrow. The enterprise, under such methods, became a failure, but was rescued by the introduction of dredges of not very efficient character.

The canal could to-day be constructed for half the amount it cost, yet the stock of the company has sold recently for more than five times its par value.

Receipts from the canal business:

	Francs.
1878. Total receipts, less land and water rents.....	31,292,347
1879. Total receipts, less land and water rents.....	33,500,000
1880. Total receipts, less land and water rents.....	41,676,792
1881. Total receipts, less land and water rents.....	51,941,509

Expenditures for maintenance, management, and operation:

1878. Total expenses, less those for lands and irrigation	4,630,139
1879. Total expenses, less those for lands and irrigation	4,389,000
1880. Total expenses, less those for lands and irrigation	4,780,713
1881. Total expenses, less those for lands and irrigation	

Mean of three years..... 4,599,950

The gross expenditures for 1881, including interest on obligations, bonds, and capital shares, were 28,000,000 francs. For 1878 the same expenditures were 28,678,325 francs; for 1879, 28,059,000 francs, and for 1880, 28,179,807 francs. Hence the mean of the expenditures for maintenance, &c., for three years would be a large amount to assume for the year 1881, but is adopted (being \$876,751) because the itemized expenditures for the year will not be made known until the meeting of the canal board in May next.

This rate of expenditure for 1881 is 8.85 per cent. of the gross receipts. During 1880 old appliances were discarded and new ones provided, creating an increased expenditure for "entretien."

Expenditures for 1880:

	Francs.
For administration in Paris and Egypt.....	1,142,619
For maintenance and repairs, including about 1,500,000 cubic yards of dredging in Port Said harbor and in the canal	2,079,875
For operating the canal, including towage, tow-boats, pay of employés, materials, tools, lights, &c	1,558,219
Total expenditures.....	4,780,713

Were the expenses of the Paris office (amounting to \$164,000 of a total expenditure of \$876,751) reduced to an economical basis, *the total expenses would be less than 7 per cent. of the gross receipts.*

The yearly cost of maintaining and operating railways is from 60 per cent. of gross earning upwards to their full amount. The great trunk lines are less expensive than ordinary roads.

In 1880 the expenses of the New York and Hudson River Railroad (very low grades) were 59.04 per cent. of gross earnings; of the Erie Road 62.29 per cent., and of the Pennsylvania Road 61.80 per cent., the mean being about 61 per cent.

The business of the Suez Canal for 1881 amounted to \$9,900,052. Had its expenses been 50 per cent. of earnings, its account would have stood thus:

1881. Gross earnings of canal.....	\$9,900,052
Expenses, 50 per cent. of gross receipts	4,950,026
Net earnings	4,950,026

The company's account was as follows:

1881. Gross receipts of canal.....	\$9,900,052
Expenses	876,751
Net earnings—9½ per cent. on cost.....	9,023,301
Net earnings for same traffic, based on railway expenditures	4,950,026
Difference in favor of the canal transportation.....	4,073,275

The Nicaragua Ship-Canal, 53.15 miles long, *is estimated by government officers to cost, including harbor and river improvements, \$41,000,000, the estimates being based on actual governmental surveys and measurements.*

Assume the *total cost to be* \$75,000,000, the receipts necessary to earn the same rate of dividends as the Suez Canal is now earning, would be:

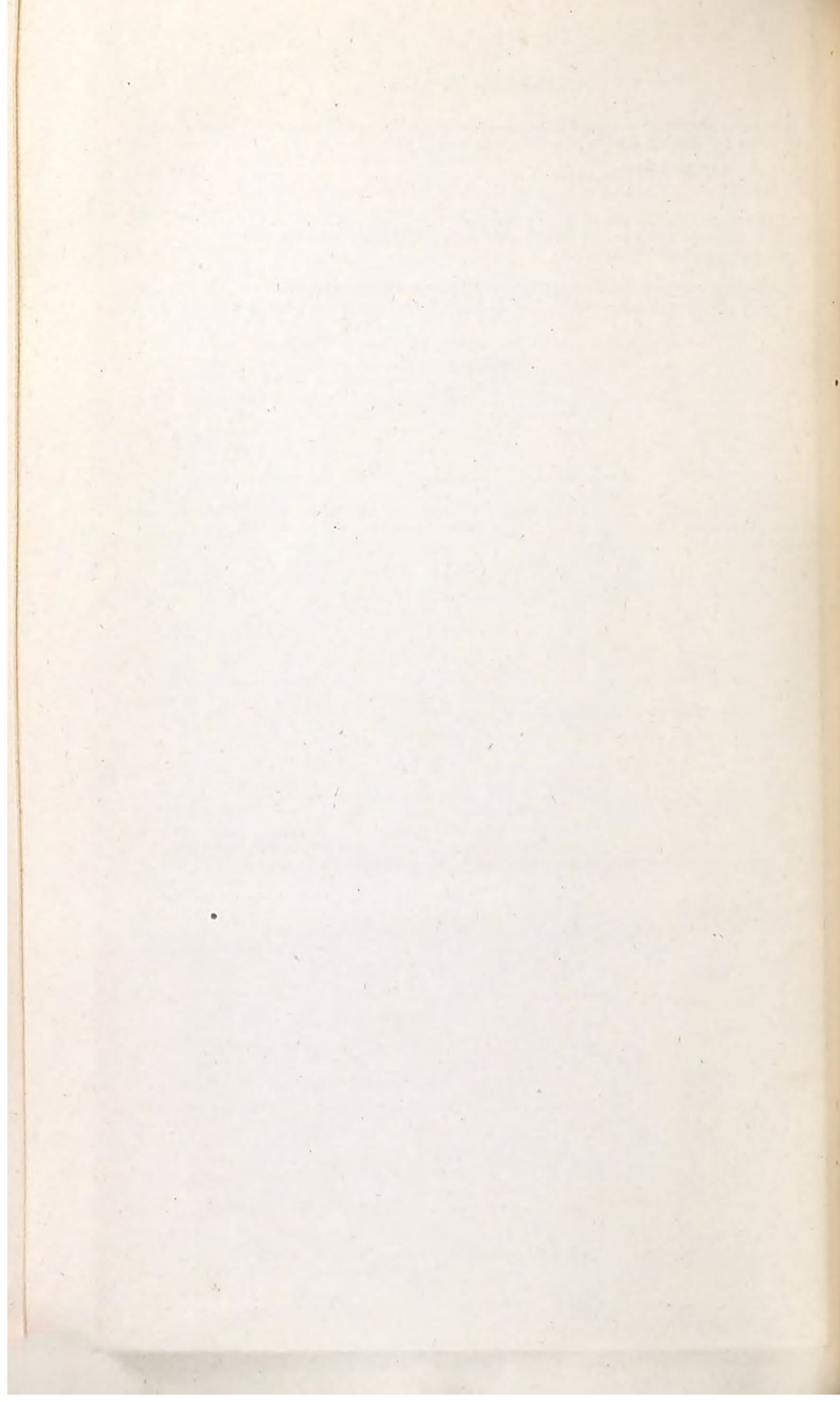
9½ per cent. on \$75,000,000.....	\$7,252,500
Expenditures	600,000

Receipts necessary for 9½ per cent. net earnings	7,852,500
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Receipts necessary for 9½ per cent. net earnings, assuming expenses to be 50 per cent. of gross receipts	14,505,000
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Difference in favor of transportation by the Nicaragua Canal.....	6,652,500
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A railway would therefore impose a tax on commerce \$6,652,500 greater than a canal.



NICARAGUA CANAL.

AUGUST 7, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. BLOUNT, from the Committee on Foreign Affairs, submitted the following as the

VIEWS OF THE MINORITY:

[To accompany bill H. R. 6799.]

The undersigned, members of the Committee on Foreign Affairs of the House of Representatives, cannot concur in the views of the majority members of that committee on the bill (H. R. 6799) to incorporate the Maritime Canal Company of Nicaragua and the report accompanying it. We are not unmindful of the advantage to commerce of a route across the isthmus, instead of around Cape Horn. A comparison of figures, showing the enormous difference in distances for American commerce between the Nicaragua and Cape Horn routes, proves the interest this nation has in considering all propositions looking to every mode of isthmus transit. Not alone are we to consider their economic features, but we must guard with jealous care against any political domination of them by European governments. How far the influence of our government over them is affected by treaties with other countries is likewise a subject for gravest consideration. To involve this government in any obligation to construct any of the various schemes for isthmus transit without a sure guarantee that it was to see that they never came under the control of any European power would be unstatesmanlike—indeed an evidence of folly or crime of extraordinary magnitude against the American people. How far the Congress of the United States may go in constructing canals or railroads in foreign countries when the right of sovereignty over them is denied, and when the direction of them may by the purchase of stock fall into the hands of foreigners hostile to our trade, ought not, cannot be ignored. The *ex-parte* character of the merits of these schemes for government aid, their ability to command the favor of a large part of the American press, and the glamour of distinguished names usually presented in connection with them, as well as the burdens of taxation they may entail upon the people, admonish us of the necessity of extreme caution in anything we may do in the premises.

The bill of the committee proposes to charter a company with a capital stock of from fifty to one hundred millions of dollars. It provides for eleven directors, one to be chosen by the Government of Nicaragua, one by the United States, and the others to be citizens of the United States, and to be selected by the share-holders. Advertisements are to be made for stock subscriptions in New York, London, Paris, and Nicaragua. Seven of these directors are necessary to make a quorum. The United States director is to make oath to reports and statements to be used by his government to ascertain its liabilities in connection with its

guarantee of dividends, &c. The United States is to guarantee to said company that for the period of twenty years from and after the completion of said canal and the commencement of the passage of vessels through it from ocean to ocean the net receipts from its traffic each year shall not be less than three per centum upon the total cost of said canal, but in no event to exceed seventy-five millions of dollars.

The canal is to be 28 feet in depth and 150 feet in width on the water surface. The practical breadth of a canal is its breadth at the bottom. The bill of the committee strangely omits any regulation at this point. It would affect greatly the cost of the work and the facility and security of vessels passing each other in the canal.

The bill proposes that this government shall guarantee for twenty years from and after the completion of the canal and the commencement of the passage of vessels through it from ocean to ocean the net receipts shall not be less than three per centum upon the total cost of said canal. The size of the vessels is not prescribed. A very narrow bottom width, admitting the free passage of a small class of vessels, might still be insufficient for the wants of the large vessels of commerce. The liability of this government would nevertheless be complete. The necessity of enlargement would force it into further liabilities, or make a continuous drain on the national Treasury for the full term of twenty years. There is no provision for the payment of the government director. The two modes of ascertaining the charges, dues, and tonnage are fixed in the bill, and also regulation that it shall not be less until the net receipts shall exceed three per centum upon the stock unless the United States Government director and the Secretary of the Treasury shall so direct. This permission to the government director and the Secretary of the Treasury is a specific waiver *pro tanto* of the security to the United States against paying dividends on stock to be found in the tonnage dues. This observation is based on the presumption that this statute would conclude any question as to the sovereignty of the Government of Nicaragua over them. Whether this presumption is true or not we will consider hereafter.

Section 6 directs that when the receipts show ten per centum upon the capital stock of said company the rate of charges shall be reduced so that the net profits shall not exceed ten per centum. Expenditures for maintenance, management, operation, and service of the canal, together with a reasonable reserve fund not to exceed five per cent. of the receipts for the improvement of the canal and terminal points, and for the depreciation of property, shall be allowed as part of the yearly expenditures, as shall any percentage to be at any time paid to the Government of Nicaragua.

The engineers estimate the cost of the work at \$42,000,000. The stock may be for \$100,000,000. The ten per centum would be on the latter sum instead of the cost of the work, and taxed on the commerce of the world. The bill declares that the United States Government shall exercise such control over the canal as is now or may be prescribed by treaty; and may occupy and manage the same temporarily or otherwise subject to the sovereign rights of Nicaragua and consistently with treaty obligations upon payment to the stockholders of said canal, at the rate of five per centum upon the capital invested, with the expenses necessary to maintain the work during the time of occupation. The right to alter and amend the act is reserved to Congress.

Such is a brief outline of the several propositions presented by the bill and report. The Panama Canal is in course of construction under the direction of M. de Lesseps. His wonderful success in constructing the Suez Canal, and the vast capital aiding him in the Panama project,

give us reasonable assurance of its completion. Capital is cautious and intelligent, and yet it has seized upon this first as most worthy of its confidence. The numerous discouraging reports in relation to it, it is believed, originate from hostile sources. They are of little import when compared with similar discouragements thrown across the path of the same distinguished man in connection with the Suez canal. It is prudent to assume that De Lesseps will complete a transit for ships of any size at Panama. This being so, we need no longer think of the long route via Cape Horn. We are to consider whether it is desirable to build the Nicaragua route in addition. If the Nicaragua Canal is a better and cheaper route than the Panama, thereby offering temptations to profitable investment, the estimate of its cost places it quite within the competence of private capital to do the work. It is not easy to see how the United States is to be saved harmless from her three per cent. guarantee.

The estimate of tonnage of the Nicaragua route, in competition with the Panama route, is made by the advocates of the former, who have large pecuniary interests in its success. It is but ordinary discretion to resort to higher and more reliable sources of information when it involves the possibility of payment from the Treasury of three per cent. for twenty years on \$75,000,000. In estimating the cost of maintenance of the Nicaragua Canal resort is had to tables showing cost of maintenance of other lines. The conditions are too different to be valuable. For instance, the Suez Canal has no locks, while Nicaragua has. What is the expense of the locks? How are we to compare the silting from the rainless desert region about the Suez Canal with that in the Nicaragua Canal, where the rainfall is enormous? The majority claim that the excavations in the Suez Canal could now be made for one-half its cost, because it was done upon the backs of the laborer instead of as now, by machinery. This is not a fair statement. The manual labor was very cheap, being furnished at low rates and forcible in character. When this was prohibited, an indemnity of \$7,000,000 was paid by the Khedive. Most of the work done by hand could not be done by machinery. Such was the opinion of those connected with the work. A large part of the work was done by machinery.

These loose statements are in keeping with much of the information furnished the committee. It is not our purpose to go into an examination of the tables presented by the majority to examine their true value. It is sufficient to say that they are the tables of Captain Phelps, without modification, and that he is the principal advocate of the Nicaragua route. We believe that there are questions of more importance than the chances of profitable investment.

Who shall control this canal when built? What political power is to dominate it in the event of international disputes? Section 2 of the committee's bill declares—

The United States shall exercise such control over the canal as is now or may be at any time prescribed by treaty, and may occupy and manage said canal subject to any sovereign rights of Nicaragua, &c.

The control of the United States, then, is limited by treaty stipulations and the sovereignty of Nicaragua. The treaty stipulations are to be found in the Revised Statutes relating to the District of Columbia and post-roads and public treaties, pages 570, 571, and 572, Articles XV, XVI, XVII, XVIII, XIX, XX.

The United States agrees to guarantee the neutrality of all transit routes between the Atlantic and Pacific Oceans in the state of Nicaragua, and agrees to use its influence with other nations to *induce them* to guarantee such neutrality and protection. Free passage for troops

and mails of the United States through said routes is conceded to it. The Republic of Nicaragua is bound to use such military force as may become necessary for the protection and security of persons and property passing any of the routes aforesaid, but upon failure to do this the Government of the United States may, with the *consent* or *at the request* of the Government of Nicaragua, employ such force for this and no other purpose; and when, in *the opinion of the Government of Nicaragua*, the necessity ceases, *such force* shall be immediately withdrawn. In the exceptional case of unforeseen or imminent danger to the lives or property of citizens of the United States, the forces of said republic are authorized to act for their protection without such consent having been previously obtained. The United States may withdraw its guarantee should it become dissatisfied with the regulations of the companies controlling said routes, first giving six months' notice of its intention to do so. All grants and contracts to be made must recognize the rights of the United States under this treaty. It is to continue for fifteen years, subject to alteration or termination after twelve months' notice from either of the contracting parties. The United States may protect these transits, but she must be first invited to do so by the Republic of Nicaragua. The United States cannot regulate tolls, but if dissatisfied with them, must find her remedy in refusing to guarantee the neutrality of the canal. She has not the exclusive power of guaranteeing its neutrality, but must urge the same upon other nations, and co-operate with them. Every provision in this treaty may be annulled on twelve months' notice. The stock of the aforesaid company may fall into the hands of any foreign government.

Money may be had on better terms in Great Britain than in the United States. The citizens of the former country have an immense trade to be benefited by this route. They may subscribe for enough stock to control it. They would then elect the directors, and they, though American citizens, would truly seek the interests of the stockholders. Of what value, then, is the qualification of director with American citizenship? Clearly none.

The stock once in the hands of British subjects, or maybe, as in the case of the Suez Canal, in those of Great Britain, and all treaty stipulations between *our* government and Nicaragua ended, what would be English policy? What would be American rights under the concession to the Maritime Canal Company or the aforesaid treaty of 1867? We would then have to stand from this support and establish our lines upon a policy not to allow any foreign government other than that of Nicaragua to take any step looking to the protection of this transit.

The committee were informed that French capital was anxious to get this concession. If it may do so by buying the stock after the bill of the committee passes, is it not better that this same capital shall do so before, and without any guarantee from the United States?

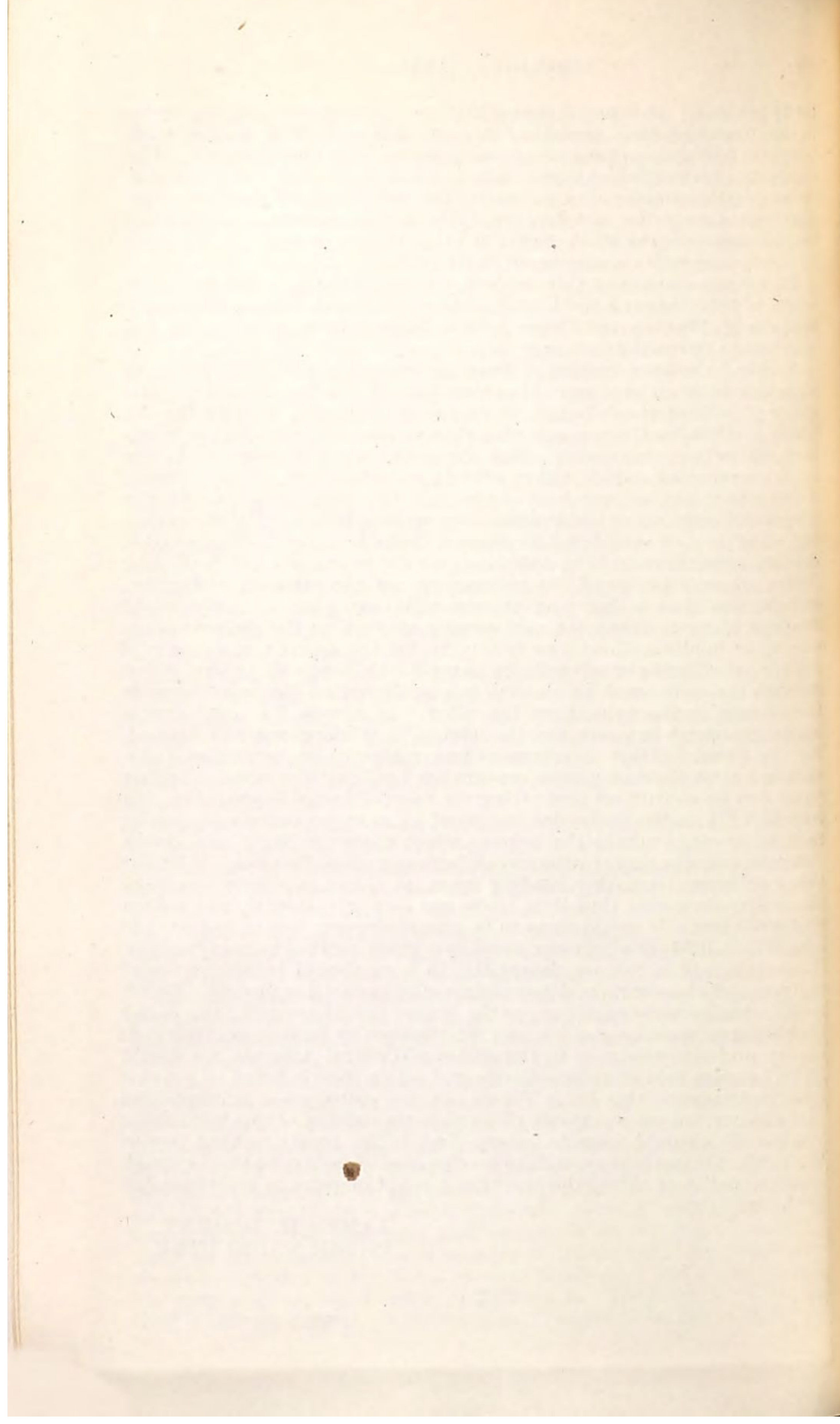
The projectors of this scheme claim they can construct the canal without government aid, but, prompted by a desire to give control of it to the government of their own country, seek the passage of the aforesaid bill, at the same time objecting to any provision requiring the stock to be owned by American citizens. Their purpose must be their own private advancement at government expense. If the United States guaranteed dividends it does not thereby acquire sovereignty. The concession is from Nicaragua and subject to its legislative control as much as is any railroad in our country to its control. Any other view would be repelled by the moral sense of mankind. We get nothing by our guarantee we would not have without it. The work is within the limit of private capital. This being so, it ought to be left to that capi-

tal to perform. It is urged that if this government is not willing to aid in this work and gain control of it, that then opposition to similar action from foreign governments on our part would be unreasonable. This suggests a very different course than is found in the bill. If it is a matter of great national policy to control this canal, and we have no sovereign rights over the country, the Federal Government, if competent, should construct the whole work, or at least own so much of the stock as would subject its management to its control.

We cannot dispose of this subject without inviting attention to the treaty of 1850 between the United States and Great Britain, negotiated by John M. Clayton and Henry Lytton Bulwer, to be found in the volume before referred to, on page 322.

Article I declares neither of these governments will ever obtain or maintain for itself over any ship-canal through the San Juan River, and either or both of the lakes of Nicaragua or Managua, between the Atlantic and Pacific Oceans, agreeing that neither will ever erect or maintain any fortification commanding the same; nor will either make use of any protection which either affords, or may afford, or any alliance which either has, or may have, to or with any state or people for the purpose of erecting or maintaining any such fortification, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito coast, or of assuming or exercising dominion over the same; nor will the United States take advantage of any intimacy or use any alliance, connection, or influence that either may possess with any state or government through whose territory the said canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one, any rights or advantages in regard to commerce or navigation through the said canal which shall not be offered on the same terms to the citizens or the subjects of the other. In Article V is contained a joint agreement to guarantee the neutrality of the canal, and protecting the same. Either government may withdraw its guarantee if dissatisfied with the regulations concerning traffic on the same. Neither party can do so without first giving six months' notice to the other. In Article VIII similar protection is agreed to, as to any communication by railroad or canal across the isthmus which connects North and South America, and especially by the way of Tehuantepec or Panama. Whether this last treaty is to-day binding upon us is not a settled question. Great Britain insists that it is, while our own government may take a contrary view. It would seem to be wise diplomacy first to endeavor to adjust this difference between these two great powers by negotiations, if possible. If in this we should fail, then we should consider a resort to force, and place our naval and military forces on a war footing. Either from a standpoint of economy, or the higher one of asserting the policy of this government to prevent any interference by foreign governments on any pretense whatever in the affairs of Central America, we should find a broader field of responsibility and action than is found in government guarantee in this bill. We do not feel called upon in connection with this measure to report our views as to the validity of this last-named treaty. This would seem to belong first to the treaty-making power. We think it important enough to be disposed of before we shall embark upon the policy of aiding the Maritime Canal Company as recommended by the majority.

JAMES H. BLOUNT.
PETER V. DEUSTER.



NICARAGUA CANAL.

[To accompany H. R. 6799.]

DECEMBER 11, 1882.—Referred to the House Calendar, and ordered to be printed.

Mr. BELMONT, from the committee on Foreign Affairs, submitted the following as the further

VIEWS OF THE MINORITY.

On February 13, 1882, the House referred to the Committee on Foreign Affairs a bill [4245] "to incorporate the Maritime Canal Company of Nicaragua."

On July 21, 1882, the committee, by a majority of its members, reported that bill back to the House with sundry amendments in the form of a substitute [No. 6799], and recommended to the House its adoption.

I am unable to concur in that recommendation.

The substitute begins with the declaration, in the form of a preamble, that "the Republic of Nicaragua has granted to certain citizens of the United States, and to their associates, forming a 'Provisional Inter-oceanic Canal Society,' certain powers, rights, and privileges in respect to the construction of a ship canal across its territory, with accessory canal, railways, and lines of telegraph, and has given full and exclusive right to a canal company to be organized by said society, to do all things necessary for the construction, completion, maintenance, and management of said canal."

The report of a majority of the committee asserts that:

This concession has been carefully examined by the committee, and they believe the same to furnish the proper authority and conditions for the successful prosecution and completion of the enterprise. The Provisional Company which obtained this concession, after consultation with the leading representatives of great business interests and capital, have agreed upon the means proposed in the bill for the initiation of the company which is to procure the capital and carry on the work to completion.

The title of the proposed substitute implies that its only purpose is to create, by a law of the United States, a body corporate, having a common seal, and capable of suing and being sued, defending and being defended, in courts of law and equity, and generally possessing and holding only the rights and privileges usually possessed and held by an ordinary corporation. But the substitute, if it becomes a law, will commit the United States to a guarantee that the annual net receipts from traffic through a canal to be built in a foreign country shall not be less in amount than the sum specified therein. It will compel the Secretary of the Treasury to annually pay, out of any money in the Treasury not otherwise appropriated, a sum necessary to make good the undertaking to which the faith of the United States has been pledged.

It declares that the President of the United States shall, by and with the advice and consent of the Senate, appoint one of the eleven members of the board of directors, whose functions, powers, privileges, and

emoluments are to be no greater than those of any other director. The capital stock of the said company is to consist of not less than five hundred thousand, nor more than one million shares of one hundred dollars each.

The sixth section of House bill, No. 4245, referred to the Committee on Foreign Affairs, engaged the United States to "guarantee to said company that for the period of twenty years from and after the completion of said canal, and the commencement of the passage of vessels through it from ocean to ocean, the net receipts from this traffic shall not be less in amount than three per centum upon the total capital stock," but the substitute binds the United States to an undertaking "that the annual net receipts from traffic shall not be less in amount than three per centum upon the total cost of said canal," which total cost shall in no event exceed seventy-five millions of dollars.

Another section of the substitute sets forth that—

Whenever the net yearly receipts of said company, ascertained to the satisfaction of the Secretary of the Treasury as in section sixth provided, shall be less than three per centum upon the total cost of said canal, as aforesaid, a full statement, under oath, of the president or secretary of the company, of the entire business of the canal for that year, the gross receipts derived therefrom, and the expenditures made, shall be transmitted by the board of directors to the Secretary of the Treasury, who, when satisfied of the amount of such deficiency, is hereby authorized and directed thereupon to pay out of any money in the Treasury not otherwise appropriated, the amount necessary to complete said three per centum, and to make good the guarantee to which the faith of the United States is pledged by the act; provided that any deficiency paid by the United States for any year shall be refunded by the company out of any subsequent net earnings of the company in excess of the amount so guaranteed.

The Government of the United States, which promises to make good this deficit, is to have only one member of the board of eleven directors of the company.

The eleventh section of the substitute provides:

That the United States shall exercise such control over the canal as is now, or may at any time be, prescribed by treaty with Nicaragua, and shall enjoy its free use for the transportation of troops, munitions of war, and mails, and otherwise, in accordance with the stipulations in existing or future treaties. And should the United States see fit, for national reasons, to occupy and manage said canal temporarily or otherwise, the right to do so, subject to any sovereign rights of the government of Nicaragua and consistently with treaty obligations, is hereby reserved and secured to the government, upon the payment to the stockholders of said canal at the rate of five per centum annually upon the capital invested, together with the necessary expenses for the maintenance of the work during the time of such occupancy and management.

The right of the United States "to occupy and manage such canal, temporarily or otherwise," is expressly limited by what this eleventh section describes as "the sovereign rights of the Government of Nicaragua, and consistently with treaty obligations." The phrase "consistently with treaty obligations," may possibly be made to include the treaty obligations which the United States may now be under not only to Nicaragua, but to any other government, and also the obligations which by treaty Nicaragua may have undertaken, or may hereafter undertake, with any other government.

THE CONCESSION GRANTED BY NICARAGUA.

A translation into English of the text of the concession is before me. The translation purports to have been revised by the official translator for the Department of State in Washington. The document is in the form of a contract, signed by Señor Cardenas, on the part of Nicaragua, and by A. G. Menocal, esq., on the part of the Provisional Interoceanic

Canal Society. It was approved by the Government of Nicaragua on April 2, 1880; was signed in the city of Managua on April 24, 1880, and was ratified by the Congress of Nicaragua on May 22, 1880. The concession, or grant, cannot be transferred to any foreign government, although the people of all nations are to be invited to contribute funds for the enterprise. Nicaragua is to have one member of the board of directors, and is to make such regulations as it may deem advisable "to maintain peace and good order in the region of the canal." The forty-first article declares that—

Having in view the entire freedom of transit of property and persons, and in order to remove all questions likely to create difficulties of an unpleasant nature, there shall be a free zone upon each bank of the canal of 100 yards in width, measured from the water's edge, it being understood that the lake shores shall never be considered as the margin of the canal. * * * The two ports to be constructed and to serve for entrances to the canal on each ocean are declared to be free, and shall be recognized as such from the beginning of the work to the end of this concession. The government, in conjunction with the company, shall mark the limits of the free zone about these ports, and the limit shall not be less than the bounds of a semi-circle having a radius of 1,600 yards, and whose center shall be the mouth of the canal.

The forty-third and forty-fourth articles stipulate that :

ARTICLE 43. By way of compensation for the expense of surveys, and for that of construction, preservation, and management of the canal, which the company shall bear throughout the term of this concession, it shall have power to levy and collect for the passage of ships and vessels of every class, for passengers and merchandise entering the canal, or the ports at the entrance of the canal, or other waters adjacent thereto, navigation, tonnage, pilotage, and light dues, as well as for towage, storage, anchorage, wharfage, and hospital dues, and whatever like charges it may establish in conformity with treaties existing between Nicaragua and other nations.

These charges may be modified by the company at any time, provided all changes it may introduce shall be previously communicated to the Government of Nicaragua, which will cause them to be observed as if they were regulations issued by the public administration.

The payment of dues shall be enforced in exactly the same degree and manner from all vessels, of whatever nationality and from whatever port, without distinction of any kind, with the restrictions provided in the following article.

ARTICLE 44. In view of the privileges and grants which Nicaragua concedes in this contract, it is stipulated that whenever the State is free from treaty obligations with other nations that prevent vessels belonging to it and sailing under its flag, they can traverse the canal at a reduction of 50 per cent. from the general tariff while engaged in a coasting trade or reciprocal trade between the neighboring republics of Central America. But in order to avoid claims from this cause, vessels mentioned in the preceding paragraph must be in fact Nicaragua vessels, and not owned in whole or in part by citizens of any other country.

There will also be a reduction of 50 per cent. in the charges upon vessels which shall commence their voyage with a foreign destination in any of the ports of the republic, and whose cargo is exclusively composed of products of the country. All the reductions mentioned in this article shall be extended to the other republics of Central America whenever Nicaragua shall find itself in any manner free from international obligations which now prevent it, or whenever one or more of the said republics shall unite with Nicaragua to form a national government.

The company cannot collect any dues whatever upon vessels navigating the Nicaragua and its prolongations without passing the canal locks. Vessels of war of Nicaragua, and, in the event above provided, those of the republics of Central America shall pay no dues on traversing the canal.

The forty-seventh article limits the time within which the company must begin its operations or forfeit the concession. By the forty-ninth article Nicaragua is to receive for the concession five per centum of the paid up capital stock of the company, which shall not be less than 30,000 shares of \$100 each, and the Provisional Interoceanic Canal Society is to receive, in consideration of its expenditures, outlays, and doings in obtaining the concession and in other matters "six per centum of the capital stock in shares paid in excess of the capital which must be subscribed," and one-fifth thereof shall belong to Nicaragua.

The fifty-fourth and fifty-fifth articles are these :

ARTICLE 54. At the expiration of the 99 years herein stipulated the republic shall enter upon possession in perpetuity of the canal, the machinery, lights, store-houses, stations, deposits, and all the establishments used in the administration of the canal, without being called upon to pay any sum whatever to the company.

There will be exempted from this condition vessels belonging to the company, its supply of coal and other materials, its workshops, its movable property, floating capital and reserve fund, as well as the lands granted to it, excepting those on which exist the establishments and works mentioned in the first part of this article, and which shall become the property of the State, with their surrounding appurtenances, as necessary to the canal service and integral part of the same.

But the company shall have the right at the expiration of the time named to the full enjoyment of the free use and control of the canal in the capacity of lessee, with all the privileges and advantages conceded in this contract, for a further term of 99 years, upon condition of paying 25 per cent. of the net gains annually to the Government of Nicaragua over and above the dividends belonging to its shares of the capital stock. But the company shall have the right to fix, at its discretion, the dues referred to in article 50 of this concession in such manner as shall pay this 25 per centum from the net gains and leave sufficient to pay dividends to shareholders at not exceeding 10 per cent. per year upon the capital shares.

At the expiration of this second term of 99 years the government shall enter into perpetual possession of the canal, and all property referred to in the first part of this article, including, besides, that accepted in said first part, except the reserved capital and sinking fund.

Failure to comply with any of the conditions of the lease shall terminate it, and the government shall enter into possession of the canal and other works belonging to it, in accordance with the provisions of the preceding article.

ARTICLE 55. Any dispute that may arise between the Government of Nicaragua and the company touching the interpretation of those stipulations shall be submitted to arbitrators, to be composed of four persons, two selected by the State and two by the company. These arbitrators shall be designated by each of the parties within the period of four months from the day on which one of the contracting parties shall have informed the other, in writing, of the failure to reach an understanding on the point under discussion. A majority of the arbitrators shall decide definitely and without recourse. In case of a tie vote the arbitrators, by mutual consent, shall name a fifth person. If unable to agree in naming a party, they shall draw by lot from the names of the diplomatic representatives accredited to Nicaragua, and the first one drawn shall perform the functions of fifth arbitrator.

He shall adopt the opinion of one or the other of the extremes, or one immediate between them, and his decision shall be final.

Previous to the initiation of the canal works, the government, with the concurrence of the company, shall draw the rules and regulations governing the proceedings of the board of arbitration.

In default of this fifth arbitrator, the second one drawn, or failing this one, each succeeding one shall exercise the functions until a decision is reached.

Questions between the company and individuals residing in Nicaragua shall be submitted to the regular tribunals of Nicaragua for adjudication, in accordance with the laws. In matters pertaining to those not residing in Nicaragua rights secured by international law will apply.

THE FIFTY-FIRST ARTICLE OF THE CONCESSION.

The financial objections to pledging the credit of the United States, as is proposed by the substitute, seems to me insuperable, but even if those objections did not exist I should even then be deterred by the fifty-first article of the concession from recommending the enactment of the substitute. The article is in these words :

ARTICLE 51. The contractors reciprocally agree, whenever Nicaragua may think it desirable, to take measures with respect to such of the governments of America and Europe as they desire shall guarantee the neutrality of the canal, with the view to soliciting the necessary conventions based upon the Clayton-Bulwer treaty.

“The contractors” are Nicaragua and the “Provisional Interoceanic Canal Society.” That agreement, made by and between those two contracting parties respecting a guarantee of the neutrality of the canal by European governments, will be, I fear, transferred, in substance and

effect, to the statute book of the United States if the substitute be adopted by Congress. Whatever foreign government these "contractors" may desire to have as a guarantor of "the neutrality of the canal" is to be solicited to make "the necessary convention based upon the Clayton-Bulwer treaty." It is true that the existing treaty between the United States and the Republic of Nicaragua, concluded on June 21, 1867, does bind the United States "to employ their influence with other nations to induce them to guarantee" and protect the "neutrality and innocent use" of the canal. And the eighth section of the Clayton-Bulwer treaty, concluded seventeen years earlier, stipulates:

The Governments of the United States and Great Britain having not only desired, in entering into this convention, to accomplish a particular object, but also to establish a general principle, they hereby agree to extend their protection, by treaty stipulations, to any other practicable communications, whether by canal or railway, across the isthmus which connects North and South America, and especially to the inter-oceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec Panama. In granting, however, their joint protection to any such canals or railways as are by this article specified, it is always understood by the United States and Great Britain that the parties constructing or owning the same shall impose no other charges or conditions of traffic thereupon than the aforesaid governments shall approve of as just and equitable; and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other State which is willing to grant thereto such protection as the United States and Great Britain engage to afford.

If Congress shall adopt the recommendation made by a majority of the Foreign Affairs Committee, and the President shall approve the legislation, then what legal relation will thereby be created between the Clayton-Bulwer treaty, this concession from Nicaragua to the Provisional Interoceanic Canal Society, and the law of the United States which accepts and is based upon that concession?

The concession by Nicaragua, which contains the reference to the Clayton-Bulwer treaty, and to a guaranty by European governments of the neutrality of the canal, was signed, it is to be noticed, on April 24, 1880, but on June 24, 1881, and presumably by the command of President Garfield, very positive representations were made by the Department of State to the British Government respecting the Clayton-Bulwer treaty, and also to the leading powers of Europe respecting the attitude that the Government of the United States would feel itself bound to assume toward any European government that either stipulated or expressed a wish to stipulate to guarantee the neutrality and innocent use "of the interoceanic canal now projected across the Isthmus of Panama." Those representations were, on the 19th and 20th of November, 1881, repeated and reinforced by the Department of State after President Arthur came to power.

TREATIES RESPECTING THE CANALS.

The first diplomatic arrangement made by the United States concerning a canal is in one article of the convention with the Republic of New Granada, concluded December 12, 1846, by President Polk, and while Mr. Buchanan was at the head of the Department of State. The next treaty which has a bearing on the neutrality and innocent use of a canal is that concluded between the United States and Her Britannic Majesty on April 19, 1850, during the term of office of President Taylor. It was negotiated and signed at Washington by Mr. Clayton, as Secretary of State and as plenipotentiary on behalf of the President.

The third treaty is that of June 21, 1867, with the Republic of Nicaragua, signed by the authority of President Johnson, while Mr. Seward was Secretary of State. On several occasions the President has vainly endeavored to obtain modifications of each of these conventions.

THE PANAMA TREATY.

The Panama treaty—the first diplomatic transaction by which the United States acquired treaty rights and assumed treaty obligations respecting a canal—is, in its general purport, an ordinary international arrangement of peace and friendship, commerce and navigation. Only one of its thirty-six articles refers to a canal. In it the United States guarantee “positively and efficaciously” to New Granada the perfect neutrality of the Isthmus of Panama, in order that a free transit from the Atlantic to the Pacific may not be interrupted or embarrassed in any future time while the treaty exists. The United States also guarantee the rights of sovereignty and property which New Granada has and possesses over the territory of the said isthmus. In consideration of and in compensation for this comprehensive and burdensome undertaking New Granada makes certain stipulations with the United States respecting a right of way across the Isthmus of Panama, upon any modes of communication that then existed or may thereafter exist, and respecting transportation and traffic by railway or canal across or through the same. This arrangement was, by its express terms, to remain in force during twenty years (which twenty years expired in June, 1868), and then, if neither party gave notice of intended termination, the treaty is to continue in force during a further period, terminable by either government on twelve months’ notice. It does not appear that such a notice has been given by either party. The convention is therefore now in force. Any canal at Panama, begun and built in accordance with the stipulations of that treaty, and with the concurrence of the United States, will be under the guaranty and protection of the United States, and Colombia can call for that guaranty and protection, as defined in the thirty-fifth article. The Government of the United States has, on several occasions, been called upon to enforce the guarantee of the treaty, and has enforced it. The relations and obligations of the United States in respect to that guarantee have been considered in an official opinion by the Attorney-General of the United States.

Eight years after the ratification of this treaty an unfortunate affair occurred at Panama, wherein crimes and outrages were committed upon citizens of the United States and their property, which constrained the United States to believe that New Granada had not the ability to punish the wrong-doers, nor to afford proper protection in the future to the property and persons of American citizens on the route of the Panama Railway. Thereupon, and during the administration of President Pierce, Mr. Marcy, as Secretary of State, created a commission to open a negotiation with New Granada, in order to promote a cordial and good understanding between the two countries. The State Department furnished the commissioners with a *projet* of a convention for that purpose, and instructed them to urge upon New Granada its acceptance. Mr. Marcy, in his note of December 3, 1856, said to the commissioners:

It is not designed, as you will perceive, to secure any exclusive advantage to the United States. To remove all objections of this sort, an article is proposed securing the common use of the Panama Isthmus to all foreign nations. Should this government get control of the road, it would at once take measures to satisfy foreign nations that it would be kept open for their common use, on fair terms; and they would be asked to become parties with the United States to a guarantee of the neutrality of that part of the Isthmus.

The project of a treaty was not satisfactory to the Government of New Granada.

In the year 1868, and while Mr. Johnson was President, Mr. Seward again attempted the negotiation of a convention to define and regulate with more precision the relations between the United States and the Isthmus of Panama. A treaty was signed at Bogota, on January 14, 1869, but I am not informed whether or not it was transmitted to the Senate of the United States by the President for ratification. In its eighteenth article it was stipulated that the two governments "mutually agree to second the efforts of each other in procuring the friendship and guarantee of all nations in favor of the stipulations of neutrality mentioned in Articles VII and IX, as well as the sovereignty of the United States of Colombia over the territory of the Isthmus of Panama and Darien."

Two years afterward, and while General Grant was President, Mr. Fish authorized the American Minister at Bogota, Mr. Hurlbut, to open another negotiation with the United States of Colombia in respect to an interoceanic canal. In a note addressed by Mr. Fish to Mr. Hurlbut, dated September 4, 1869, it said:

The proposal of a protectorate over the canal, in which other maritime powers should be joined with the United States in equal control, would probably remove many of the obstacles to the attainment of the grant, and might secure the ratification of a treaty by the Colombian Government. But in the present state of international law, such joint protectorate would be the source of future trouble, and, while it might facilitate the concession of the Colombian Government, would be viewed by apprehension in the country, and might probably prove an obstacle to the ratification by the United States Senate of a treaty on the subject. Apart, however, from the latter consideration of expediency, the President is disinclined to enter into any entanglement in participation of control over the work with other powers. He regards it as an American enterprise, which he desires to be undertaken under auspices, to the benefit of which the whole commercial world should be fully admitted.

In a note from Mr. Hurlbut to Mr. Fish, dated at Bogota, January 5, 1870, the former, in referring to the substance of what had been already agreed upon in the negotiations, made this specification :

The canal to be open to all nations at peace with both parties on terms of absolute equality of duties and impost ; but to be rigorously closed against the flag of all nations at war with the other.

On February 1, 1870, Mr. Hurlbut, in a note acquainting Mr. Fish with a sketch of the principal points in the treaty which had then been signed, mentions that in it the United States had undertaken to guarantee the sovereignty of Colombia, and to use their influence "to procure from other nations the same guarantee, and also of neutrality." In the Congress of Colombia, to which the treaty was transmitted for ratification, there appears to have been protracted debate thereon; and Mr. Hurlbut said, in a note to the Department of State, of April 17, 1870, that he had finally been compelled to approve a modification "in accordance with the principles of the Clayton-Bulwer Treaty." The treaty, as signed by Mr. Hurlbut, was so modified by the Congress of New Granada that it became unacceptable to the United States. In a note to Mr. Fish, dated July 13, 1870, Mr. Hurlbut thus alluded to a European guarantee:

The clause in relation to ships of war of guaranteeing nations as limited by section 3 can be considered under several points of view :

1. Either the United States will adopt the idea of the original treaty that the canal shall be in an American channel, practically controlled by the United States, as against the world, for all but purely commercial transit, as a necessary element of national security and power. In that event the modification referred to will be rejected. Or,

2. The United States may admit the policy of inviting the maritime nations to incur the same responsibility she has assumed, upon the conditions mentioned in the amended article. In such event the amendment will be accepted. Or,

3. The United States may make her own terms with the maritime powers as to this complicated question by a new arrangement. On this point I am perfectly well assured that any agreement made between England, France, and North Germany which shall leave this country neutral in case of war with any of them and the United States will be accepted as a solution of the problem. They fear that in case of such a war they will be unwillingly dragged into it by having conceded to the United States alone the right of transit for ships of war, &c., at all times. They have no objections to the United States having this privilege, except so far as it tends to embroil them with other powers.

I think, as I have already written to you, that neither England, France, nor Germany will accept the obligations of defense of the canal, sovereignty of Colombia, and immunity of the territory, which are required as conditions precedent to the privileges given in the sections 2 and 3 of the amended article 11. The United States, in my judgment, before acting upon this treaty, should diplomatically ascertain and determine what will be the course of these nations on this question, and if a solution satisfactory to the great maritime powers can be arrived at, it will be satisfactory to this government and people.

If the European maritime powers shall reject the proposition made, that rejection should be considered final, and both the United States and Colombia at liberty to act without reference to them in any way.

My personal opinions are in favor of the ultra-American views of the matter, but I can see that other points in the negotiation will be wonderfully simplified by any accord arrived at by the maritime nations. In such case the influence of those governments will be strongly given to reduce the heavy burdens imposed on the financial success of the undertaking, both by reduction of the participation of Colombia and by aid in money markets.

In the year 1886, the legation of the United States in New Granada was withdrawn, and diplomatic relations were not renewed with that government by the appointment of a minister until the summer of 1878. During the period when the Government of the United States had no diplomatic representative at Bogota, a concession was made, on March 18, 1878, by the United States of Colombia, granting to Mr. Lucien N. B. Wyse, in behalf of the International Interoceanic Canal Association, "The exclusive privilege for the construction across its territory, and for the operating of a canal between the Atlantic and Pacific oceans." There is no evidence, accessible to me, that shows when the Government of the United States was first officially informed that negotiations for this concession to Mr. Wyse were on foot in Bogota, or when the State Department in Washington was first informed that the concession had been actually signed. On April 19, 1880, however, and while Mr. Hayes was President, Mr. Evarts did, in a note to Mr. Dichman, the American minister at Bogota, express the surprise of the President that—

The Government of Colombia has not deemed it natural and suitable, in view of the treaty regulations between the two countries, to inform the Government of the United States of the concession which has been recently granted to Mr. Wyse, and that the consent of that government has been transferred to M. De Lesseps.

Mr. Evarts adds that no other government has thus far been willing to enter into any such treaty relations with Colombia, respecting the canal, as the United States have entered upon, and "to-day, such a canal, by whomsoever completed, would need to rest upon this stipulated protection of the United States; and should the United States recognize their rights under this concession, both its projectors and the Government of Colombia would be authorized, under certain contingencies, to call upon, and be wholly dependent upon this government for the fulfillment of this obligation." He complains that the Government of Colombia had not "furnished us timely information of the proposed concession, and thus enabled us to judge whether the conditions under which

our guarantee had been made, had been preserved with due consideration." Mr. Dichman is also informed that the Government of the French Republic has promptly and emphatically assured us that it "has had, and now has, no connection in any form, directly or indirectly, with this enterprise." Nevertheless, Mr. Evarts is distinct in his expression of the opinion that any negotiations by Colombia involving such consequences to the United States as are implied in the treaty of 1846, "should be a subject of joint consideration by, and that its details can scarcely be settled without a preliminary agreement between the two governments of Colombia and the United States, as to their effect upon existing treaty stipulations." In concluding his note to Mr. Dichman, Mr. Evarts adds:

The Government of Colombia is well aware that its proposition to the great maritime powers to join in the guarantee of the neutrality of the Isthmus and the sovereign and proprietary interests of Colombia heretofore made was declined, and the reasons of their unwillingness to assume this joint responsibility are, of course, of record in the diplomatic archives of the Colombian Government.

About a year afterwards there was attempted in Washington by Mr. Evarts a negotiation with the Colombian minister to make more specific the obligations undertaken by both nations in the treaty of 1846, and to avoid the dangers which might arise by the construction of a ship-canal across the Isthmus of Panama. A protocol to that effect was finally signed in New York on February 7, 1881, by Mr. Trescot, on the part of the United States, and by General Santo Domingo on the part of Colombia; but on May 7, 1881, the Government of Bogota addressed a note to the Department of State at Washington, saying that the Government at Bogota regrets to find the declarations made in that protocol by its Colombian negotiator are "at variance with instructions which were transmitted to him."

In this last diplomatic transaction the American negotiators insisted that the concession to Mr. Wyse contained provisions which were an infringement of the rights of the United States under the New Granada treaty of 1846; and therefore the first article of the protocol, as submitted by the United States, declared that any concession heretofore made, or hereafter to be made, by Colombia, was and should be subject to the supervision of the United States, as the guarantor of the neutrality of the Isthmus and of the sovereignty of Colombia. But the Colombian negotiator, while recognizing that no rights secured to the United States by the treaty of 1846 could be subordinated to the rights conferred by the more recent concession, was unwilling to assent and did not assent to any declaration in the protocol that Nicaragua, by the concession to Mr. Wyse, had infringed the treaty rights of the United States.

This was the last effort on the part of the United States to negotiate with Colombia on the subject of an interoceanic canal.

General Santo Domingo, on his return to Bogota from New York, explained to his government, by a communication dated April 22, 1881, his view of the negotiations and the result. It may be useful to carefully note his suggestions respecting a European guarantee, since they may tend to disclose the real purposes of Colombia. He said:

No great effort of the imagination is required to discover that the intention of the Colombian minister in drafting that part of the article of the protocol just copied was to determine the possibility that by treaty other powers might also take part in guaranteeing the neutrality of the interoceanic route and the sovereignty of Colombia over its own territory, thereby inducing these powers to hasten the celebration of the said treaties with the bait of concessions made to the United States, this up to the present time having been the only nation that had offered her guarantee, and this same constituting the foundation of all the concessions hitherto granted. "It may

consequently be deduced from the foregoing that article 4 was designed to secure for Colombia a collective guarantee from all the maritime powers, this being the only one that can satisfy the necessities of universal commerce, besides avoiding the conflicts that an isolated guarantee might maintain pending, like the sword of Damocles, on only over the sovereignty of Colombia, but also over the head of the entire commercial world.

THE CLAYTON-BULWER TREATY.

The next convention relating to a canal, after that concluded with New Granada, was the arrangement known as "The Clayton-Bulwer treaty." Probably no diplomatic arrangement ever made by the United States has led to more animated and long-continued discussion between the contracting parties over the meaning and intention of the words and phrases used, or excited so much emotion extending over so many years, as has that with Great Britain concluded on April 19, 1850. But a great part, if not all, of the disputed questions which had grown out of the treaty, and perplexed the two governments, up to a date which may be generally defined as the outbreak of the sectional war in the United States, were, as it seems to me, satisfactorily adjusted, as declared to Congress by President Buchanan in his annual message to Congress of December 3, 1860. The negotiations which ended in the Clayton-Bulwer convention were begun by the United States to promote the construction of a canal in Nicaragua under a concession made by Nicaragua on August 27, 1849, to the "American Atlantic and Pacific Ship-Canal Company," composed of Mr. Cornelius Vanderbilt, Mr. White, and their associates. President Taylor sought to remove the obstacles in the way of that canal interposed by the jurisdiction and dominion in Nicaragua asserted, or exercised, by Great Britain. Another inducement to the treaty is thus set forth by Mr. Frelinghuysen in his note to Mr. Lowell of May 8, 1882, where he says:

The Government and people of the United States, though rich in land and industry, were poor in money and floating capital in 1850. The scheme for a canal, even without the complications of the Mosquito protectorate, was too vast for the means of the Americans of that day, who numbered then considerably less than one-half of their numbers to-day. They went to England, which had what they had not, surrendered their exclusive privileges, offered an equal share of all they had in those regions in order, as expressed in the seventh article of the treaty, "that no time should be unnecessarily lost in commencing and constructing the said canals." Through no fault of theirs time was unnecessarily lost, the work was never begun, and the concession failed.

During the American civil war nothing of an important character was attempted in Nicaragua in the direction of opening a canal, nor was there discussion respecting such a canal between the governments that were signatories to the Clayton-Bulwer convention. But on April 25, 1866, Mr. Seward addressed a note to the American minister in London about American coaling stations in Central America, in which the Department of State said:

It seems obvious that the renunciation by the parties to this instrument of a right to acquire dominion in Central America was intended to prevent either of them from obtaining control of the proposed ship-canal. At the time the treaty was concluded there was every prospect that that work would not only soon be begun, but that it would be carried to a successful conclusion. For reasons, however, which it is not necessary to specify, it never was even commenced, and at present there does not appear to be a likelihood of its being undertaken. It may be a question, therefore, supposing that the canal should never be begun, whether the renunciatory clauses of the treaty are to have perpetual operation. Technically speaking, this question might be decided in the negative. Still, so long as it should remain a question, it would not comport with good faith for either party to do anything which might be deemed contrary to even the spirit of the treaty. Under these circumstances, you will sound Lord

Clarendon as to the disposition of his government to favor us in acquiring coaling stations in Central America, notwithstanding the stipulation contained in the Clayton-Bulwer treaty. In doing this, however, you will use general terms only, and will by no means allow it to be supposed that we particularly covet Tiger Island. You will execute this instruction at such time and in such way as to you may seem best, and inform the department of the result, so that the United States minister to Honduras may be directed to proceed accordingly.

On April 26, 1873, Mr. Fish conditionally instructed the American minister at London to remonstrate with the British Government against certain encroachments on the territory of Guatemala which, it had been represented to the Department of State, Great Britain contemplated. Mr. Fish wrote to General Schenck:

It is believed that if such encroachments are authorized or countenanced by that government (Great Britain), it will be tantamount to a breach of its engagement not to occupy any part of Central America. Before, however, officially mentioning the subject to Earl Granville, it would be advisable to ascertain the correctness of the representation of Mr. Dardon as to the cause of the discontinuance of the demarkation of the boundary.

If the statement of that gentleman should prove to be correct, you will then formally remonstrate against any trespass by British subjects with the connivance of their government, upon the territory of Guatemala, as an infringement of the Clayton-Bulwer treaty which will be very unacceptable in this country.

In the note addressed by Mr. Evarts, on April 17, 1880, to Mr. Dichman, respecting the "Salgar-Wyse concession," the Clayton-Bulwer convention was alluded to in these terms:

If the language of the 8th article of the Clayton-Bulwer treaty of 1850, between the United States and Great Britain, be accepted as indicating the willingness of the United States that other nations should share the rights and obligations of the guarantee of the treaty of 1846, it is equally clear that such participation could only be obtained by some new diplomatic engagements in which the United States as contracting party both to the treaty of 1846 and the Clayton-Bulwer treaty of 1850, would judge of and define the circumstances and stipulations under which it would accede to such new engagements.

The protocol, February 17, 1881, to the treaty with New Granada of 1846, signed in New York by Mr. Trescott and General Santo Domingo, having been rejected by the United States of Colombia, the following message was, in October, 1881, addressed by President Arthur to the Senate:

TO THE SENATE:

I transmit herewith the report of the Secretary of State in answer to the resolution of the Senate of October 14, with accompanying document.

CHESTER A. ARTHUR.

DEPARTMENT OF STATE,
Washington, October 22, 1881.

TO THE PRESIDENT:

The following resolution of the Senate has by your order been referred to this department:

IN THE SENATE OF THE UNITED STATES,
October 14, 1881.

Resolved, That the President be requested, if not in his judgment incompatible with the public interest, to advise the Senate whether any action has been taken by the government since the adjournment of the last Congress towards protecting the rights and interests of the United States in the projected interoceanic canal at Panama.

F. E. SHOBER,
Chief Clerk United States Senate.

In answer thereto the Secretary of State has the honor to report that having

learned since the adjournment of Congress of the rejection by Colombia of the protocol negotiated by the representatives of the United States and that republic, which it was hoped would secure a treaty satisfactory to both, and being informed by the minister of the United States in Colombia that the Government of Colombia by its public acts was avowing its desire to terminate the treaty of 1846, and appeal to the powers of Europe for a joint guarantee of the neutrality of the isthmus and the sovereignty of Colombia, this department addressed the following letter of instruction to the United States minister in London.

An identic note was sent to each of the American ministers in Europe.

Very respectfully,

JAMES G. BLAINE.

In the "identic note" sent to each of the American ministers in Europe, a copy of which was left with the British minister of foreign affairs in London, are these sentences :

DEPARTMENT OF STATE,
Washington, June 24, 1881.

SIR : It has fallen under the observation of the President, through the current statements of the European press and other usual channels of communication, that the great powers of Europe may possibly be considering the subject of jointly guaranteeing the neutrality of the interoceanic canal now projected across the Isthmus of Panama. The United States recognizes a proper guarantee of neutrality as essential to the construction and successful operation of any highway across the Isthmus of Panama, and in the last generation every step was taken by this government that is deemed requisite in the premises. The necessity was foreseen and abundantly provided for long in advance of any possible call for the actual service of power. In 1846 a memorable and important treaty was negotiated and signed between the United States of America and the Republic of New Granada, now the United States of Colombia. By the thirty-fifth article of that treaty, in exchange for certain concessions made to the United States, we guaranteed "positively and efficaciously" the perfect neutrality of the isthmus and of any interoceanic communications that might be constructed upon or over it for the maintenance of free transit from sea to sea; and we also guaranteed the rights of sovereignty and property of the United States of Colombia over the territory of the isthmus as included within the borders of the State of Panama. In the judgment of the President this guarantee given by the United States of America does not require re-enforcement, or accession, or assent from any other power.

* * * * *

Any attempt to supersede that guarantee by an agreement between European powers, which maintain vast armies and patrol the sea with immense fleets, and whose interest in the canal and its operations can never be so vital and supreme as ours, would partake of the nature of an alliance against the United States, and would be regarded by this government as an indication of unfriendly feeling.

That was said during the administration of President Garfield, and by direction of his successor in the office of President those views were repeated and enforced on November 19 and 29, 1881.

To the "identic note," Lord Granville briefly replied, and concluded with this sentence :

I should wish, therefore, merely to point out to you that the position of Great Britain and the United States with reference to the canal, irrespective of the magnitude of the commercial relations of the former power with countries to and from which, if completed, it will form the highway, is determined by the engagements entered into by them respectively, in the convention which was signed at Washington on the 19th of April, 1850, commonly known as the Clayton-Bulwer treaty, and Her Majesty's Government rely with confidence upon the observance of all the engagements of that treaty.

The British Government returned to the subject in a more elaborate note of January 14, 1882, to which Mr. Frelinghuysen replied on May 8, 1882, and, among other things, said to Mr. Lowell in respect to a British or European guarantee under the eighth article of the Clayton-Bulwer treaty :

Article VIII of the Clayton-Bulwer treaty relates only to those projects now [1850]

proposed to be established; and expressly contemplates some further "treaty stipulation" on the part of Great Britain with the United States of America and New Granada, now the United States of Colombia, before Great Britain can join the United States in the protectorate of the canal or railway by the Panama route. No such treaty stipulation has been made or has been proposed by Great Britain. Since the ratification of the Clayton-Bulwer treaty, for thirty years the United States, under the treaty of 1846 with New Granada, has extended protection to the transit from sea to sea by the Panama Railway. Should Her Majesty's Government, after obtaining the consent thereto of the United States of Colombia, claim, under the Clayton-Bulwer treaty, the right to join the United States in the protection of the existing Panama Railway, or any future Panama canal, the United States would submit that experience has shown that no such joint protectorate is requisite; that the Clayton-Bulwer treaty is subject to the provisions of the treaty of 1846 with New Granada, while it exists, which treaty obliges the United States to afford, and secures to it the sole protectorate of any transit by the Panama route; and if Great Britain still claimed the right to join in the protectorate the United States would then determine whether the "treaty stipulations" proposed by Great Britain regulating that joint protectorate were just; and, if so, whether the length of time during which Great Britain has concurred in the protection of the Panama route under the treaty with New Granada has or has not relieved the United States from any obligation to accept a proposal from the government to join in the guarantee.

To the suggestion made by Lord Granville, at the close of this note of January 7, that the United States should take the initiative in an invitation to other powers to participate in an agreement based upon the convention of 1850, the President is constrained by the considerations already presented to say that the United States cannot take part in extending such an invitation, and to state with entire frankness that the United States would look with disfavor upon an attempt at a concert of political action by other powers in that direction. It is not necessary to observe that there is no provision of the Clayton-Bulwer treaty which authorizes Great Britain to invite, or obliges the United States to accept, the aid of other nations to protect or to guarantee the neutrality of the Panama route.

After such comprehensive and significant declarations made by the President respecting the treaty referred to in the recent concession by Nicaragua, and the European guarantee referred to in the fifty-first article of the concession, it becomes the House of Representatives to be especially cautious in its action on the substitute reported by the majority of the Foreign Affairs Committee. It would be inconvenient if the law-making power of this government were to invite a European guarantee of the neutrality of one or both of the canals and the treaty-making power were at the same time to repel such guarantee.

THE TREATY WITH NICARAGUA.

On June 21, 1849, a convention relating to a canal through Nicaragua was signed in the city of Guatemala, in that State, by Mr. Hise, on the part of the United States, and by Señor Selva, on the part of Nicaragua. It is to be assumed that these negotiations were begun during the administration of President Polk, and while Mr. Buchanan was Secretary of State, for on March 3, 1849, President Taylor was inaugurated, and Mr. Clayton became the head of the State Department. The convention was not accepted by President Taylor's administration and sent to the Senate for consideration. On October 20, 1849, Mr. Clayton addressed a note to the American minister in London in reference to this Hise treaty, in which the American minister was directed to inform Lord Palmerston "that this" (Hise-Selva convention) "was concluded without a power or instruction from this government; that President Taylor had no knowledge of its existence or of the intention to form it until it was presented to him by Mr. Hise, our late *Chargé d'affaires* at Guatemala, about the first of September last, and that consequently we are not bound to ratify it, and will take no steps to that purpose if we can, by arranging with the British Government,

place our interests upon a just and satisfactory foundation." The thirteenth article of the Hise-Selva convention declares that "the contracting parties in negotiating this treaty have had in view the contract entered into between the State of Nicaragua, through their commissioner, José Trinidad Munoz, and a certain company, styled *Compania de Transito de Nicaragua* * * * through the said David W. Jones as their agent, which contract was executed and signed by said commissioner and agent on March 14, 1849, and ratified by the legislative power of the State of Nicaragua on March 16, 1849, and approved by the executive power of said State on the 17th of March, 1849." This treaty, if it could have been ratified, and a canal could have been constructed under the contract referred to, would have placed the political control thereof exclusively in the hands of Nicaragua and of the United States. There does not appear to have been in the treaty any stipulation requiring or permitting the association of any other government, either European or American, in the guarantee of the neutrality or of the innocent use of the proposed canal. The United States of America agreed and undertook "to protect and defend the State of Nicaragua in the possession and exercise of the sovereignty and dominion of all the country, coast, forts, lakes, rivers, and territories that may be rightfully under the jurisdiction and within the just and true limits and boundaries of the said State." It authorized the United States "to employ their naval and military force to preserve the peace and maintain the neutrality of the said coast, forts, lakes, rivers, and territories, and to hold and keep the same under the dominion and sovereignty of the government of the State of Nicaragua." This Hise-Selva convention, negotiated during the administration of President Polk, was superseded and set aside by the negotiation opened in Washington by President Taylor's administration, which resulted in the conclusion of the Clayton-Bulwer treaty.

I have already referred to the treaty of 1867 between the United States and Nicaragua, and have quoted the first clause of the fifteenth article. The fourteenth article grants to the United States, their citizens and property, a right of transit through any canal that may ever be constructed under the authority of Nicaragua. It stipulates that this right shall be held and enjoyed in the same manner and to the same extent as it may be held and enjoyed by Nicaragua, her citizens and property. The troops and munitions of war of the United States are, on certain circumstances, to be free from any charges or tolls, and under certain circumstances of imminent danger the United States Government can, if the laws of the United States authorize such action, protect by force the lives and properties of its citizens in Nicaragua, without awaiting the consent of Nicaragua.

Negotiations to modify some of the provisions of that treaty were, in 1877, and under the instructions of President Grant, opened in Washington between Mr. Fish and Señor Cardenas, who subsequently made, in behalf of Nicaragua, the concession of April, 1880, now under consideration, but these negotiations were unsuccessful. The reasons for the failure are alluded to by Mr. Fish in a note dated February 28, 1877, and by him addressed to each of the ministers of the United States.

Dr. Aden Cardenas was accredited to this country some months since in the character of envoy extraordinary and minister plenipotentiary, mainly with a view of negotiating a new treaty with reference to this work, and for some time past negotiations to that end have been carried on at Washington. A draught treaty was prepared here, to which it was proposed to obtain the accession of the principal maritime powers, and of such other governments as might seem advisable, and under which

it was hoped capitalists might be induced to obtain a concession and really enter upon the work of building the canal. It has been found, however, to the regret of this government, that the views entertained by the Government of Nicaragua would not permit the negotiation of a treaty, either in the form proposed or in any form that would address itself to the approval of this government, or that seemed at all calculated to obtain the confidence or co-operation of the principal maritime powers in furthering the scheme.

The first article of the proposed convention with Nicaragua contained this substitution :

Each of the contracting parties hereto agrees to propose severally to the principal maritime powers with which it has friendly intercourse, to accede to the terms of this convention, and to enter into the following guarantees and stipulations with reference to an interoceanic canal across the Isthmus by the way of Lake Nicaragua, viz :

First. That neither will ever obtain or maintain for itself any exclusive control over the said ship-canal, or will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or in any form attempt to interrupt, control, or exercise exclusive dominion over the said canal, and that neither will at any time make use of any protection which either affords or may afford to any state or government in Central America or of any alliance or influence with any such state or government in Central America so to do, or to indirectly effect any of the said things which it agrees to refrain from.

Second. That neither will at any time use or employ, or take advantage of any influence, intimacy, alliance, or connection with any state or government through whose territories said canal may pass, or in any other quarter, to obtain for itself or its subjects or citizens any right, advantages, or facilities which shall not be offered on the same terms to each of the other maritime powers acceding to this convention, and entering into the said stipulations and guarantees, and not withdrawing therefrom.

* * * * *

Fifth. That when said canal shall have been completed the same with its property shall be protected from seizure, confiscation, interruption, or injury, and the neutrality thereof and of the adjacent land and water shall be guaranteed, so that the said canal shall ever be open and free to navigation of the nations of the earth as herein provided.

Sixth. That such guarantee of neutrality so assumed shall comprise the space on the high seas within a radius of one hundred and fifty marine miles from the entrance on each side, and on the land within a line extending along and parallel to the line of the canal for a distance of five marine miles on each side thereof.

OPINIONS OF PRESIDENTS HAYES, GARFIELD, AND ARTHUR.

Having thus, in a general way, glanced at the diplomatic history of the important question so distinctly presented by the substitute now under consideration, it may be well to inquire what opinions have been expressed thereon by the executive department since March, 1880. Under the administration of President Hayes, the Department of State, making a careful survey of the situation at Panama after the Salgar-Wyse concession, thus defined, on March 8, 1880, the line which separates the commercial from the political questions growing out of the canal :

The recent contract or concession made by the Government of Colombia with an association of foreign projectors, the text of which is herewith annexed (inclosure No. 5), brings to attention some considerations of more or less practical importance, according as we may estimate the feasibility of the project and the financial prospects of the projectors. It does, however, present an occasion for a deliberate indication by the Government of the United States of its relations to enterprises of this nature, both in its position as an American power, and under its specific treaty rights and obligations towards the United States of Colombia.

In the mere aspect of a contribution of capital, in the motive of profit to the investors, on the one part, and of a proprietary administration by Colombia of the transit through its territory as a source of legitimate revenue and local prosperity, the proposed canal might seem to fall within the ordinary conditions of pecuniary enterprise and internal development, which the general interest of commerce favor, and which it has been the policy of this government to stimulate and assist.

But this view of the subject is quite too narrow and too superficial. It overlooks the direct relations of the other American nations to the contemplated change in the route of water-borne commerce, and the indirect but equally weighty considerations by which the relations of the American nations to the great powers of Europe will be modified by this change. It does not penetrate the formal character of the contract as between private capital and local administration, and appreciate its real and far-reaching operation upon the commercial and political interests of the American continent.

The United States, therefore, as the great commercial and political power of America, becomes, necessarily, a principal party to any project which shall exhibit such solidity and proportions as to distinguish it from the unsubstantial and illusory schemes which have from time to time proposed to solve the problem of interoceanic transit. The question involved presents itself distinctly to this government as a territorial one, in the administration of which, as such, it must exercise a potential control.

While this attitude of the United States to the political and commercial problem of an interoceanic canal, at whatever point, would seem to attach to their position on the continent, the particular rights and obligations in reference to any transit across the Isthmus of Panama which grow out of the mutual engagements of the treaty with Colombia, fix more definitely the interest of this government in any material changes of that isthmus as the theater of these rights and obligations.

It is manifest that so stupendous a change from the natural configuration of this hemisphere as transforms the Isthmus of Panama from being a barrier between the Atlantic and Pacific oceans into a gateway and thoroughfare between them for the navies and merchant ships of the world, bears directly upon the weight and burden of our guarantees under that treaty. It is equally manifest, and only less important, that the organization and nationality of an immense capital and the administration of a great and growing force of managers and laborers, and the throng of population likely to attend the prosperity of the enterprise, affect essentially the conditions under which the United States may be called upon to perform the engagements of that treaty. The guarantee of the neutrality of the transit and of the sovereignty and property of Colombia in the Isthmus are one thing while the Isthmus remains in its natural and unpeopled state, and quite another when it shall have been opened to the interests, the cupidities, and the ambitions of the great commercial nations, and occupied by populations of foreign allegiance and discordant habits.

So obvious are these propositions that it may well be assumed that no contract or negotiations could ever be entered into between private projectors and the Government of Colombia, except in contemplation of this position of the United States under the treaty, and of the necessity that both the private interests and the public engagements involved, in reliance upon the power and faith of this government for their protection, must be conformed to its rightful participation and control in any arrangements that may seriously affect the discharge of its stipulated responsibilities.

While Mr. Garfield was President, the Department of State, on June 24th, 1881, dealt with the same question in this language:

It is not the wish or the purpose of the United States to interfere with any commercial enterprise in which the citizens or subjects of any foreign power may see fit to embark under a lawful privilege. The fact of the stock and franchises of the Panama Canal or the Panama Railway being owned in Europe, either in whole or principally, is no more a subject of complaint on the part of the United States than is the circumstance that the stock of many of its own great lines of railway is largely held abroad. Such ownership, with its attendant rights, is in the United States amply secured by the laws of the land, and on the Isthmus is doubly secured by the local laws of Colombia, under the superior guarantee of the United States. Nor in time of peace does the United States seek to have any exclusive privileges accorded to American ships in respect to precedence or tolls through an interoceanic canal any more than it has sought like privileges for American goods in transit over the Panama Railway, under the exclusive control of an American corporation. The extent of the privileges of American citizens and ships is measurable under the treaty of 1846 by those of Colombian citizens and ships. It would be our earnest desire and expectation to see the world's peaceful commerce enjoy the same just, liberal, and rational treatment. It is as regards the political control of such a canal, as distinguished from its merely administrative or commercial regulation, that the President feels called upon to speak with directness and with emphasis.

Since President Arthur has been in office, and on May 8, 1882, the Department of State has again presented the views of the Executive:

There is, however, no necessary conflict between the political claims of the United States in this matter and the material interests of other nations. A canal across the Isthmus can be created, and under the protectorate of the United States and the re-

public whose territory it may cross can be freely used by all nations; thus, in some degree, would be continued to the United States the benefit of that conformation of the earth which is now an element of security and defense.

The President, therefore, considers it unnecessary and unwise, through an invitation to the nations of the earth, to guarantee the neutrality of the transit of the Isthmus, or to give their navies a pretext for assembling in waters contiguous to our shores, and to possibly involve this republic in conflicts from which its natural position entitles it to be relieved. It will doubtless occur to Lord Granville, as it does to us, that international agreements of this kind, calling for interference by force and conferring joint rights upon several independent powers, are calculated to breed dissension and trouble. In times of peace, when there is no call for their exercise, they are harmless though useless. But when wars and trouble come, it too frequently happens that differences arise, and so at the very moment when the agreement should be enforced it is impossible to enforce it; and such agreements would lead to that political intervention in American affairs which the traditional policy of the United States make it impossible that the President should either consent to or look upon with indifference.

What bearing on the fifty-first article of the recent concession by Nicaragua have those opinions, so distinctly proclaimed within the last three years by the command of three Presidents of the United States?

THE NEUTRALITY OF THE CANAL.

Besides the fifty-first article of the recent concession by Nicaragua there is another article which bears directly, not only upon the neutrality of the canal and of a free zone bordering thereon, but upon the neutrality "of the sea on both oceans." It will be kept in mind that the substitute, proposed by a majority of the Committee on Foreign Affairs, expressly refers to this concession made by Nicaragua, and distinctly intimates that it is intended thereby to organize a company "for the purpose of carrying into effect the provisions of the said canal concession." The text of the sixth article, when translated into English, is as follows:

ARTICLE 6. The Government of the Republic declares, during the term of this concession, the ports at each extremity of the canal and the canal itself from sea to sea to be neutral, and that consequently this transit, in case of war between two powers, or between one or more and Nicaragua, shall not be interrupted; and that merchant vessels and citizens of all nations may freely enter the ports and pass through the canal without molestation or detention. In general all vessels may pass through the canal freely, without distinction, exclusion, or preference of persons or nationality, provided they pay the dues and observe the regulations established by the company for those using the canal and its dependencies. In respect to the transit of foreign troops and vessels of war, their passage through the canal will be subject to the conditions contained in treaties between Nicaragua and other powers, or those of international law. But the entrance of the canal will be rigorously prohibited to vessels of war of such powers as may be at war with Nicaragua or with any of the Central American States.

Nicaragua will endeavor to procure a guarantee from all powers of the neutrality of the canal and of a zone along it, and of the sea on both oceans, the extent to be fixed in the conventions.

Therein the canal, from ocean to ocean, and the port at either extremity of the canal, are declared to be "neutral"; and consequently the transit into, through, and out of the canal shall not be interrupted even in case of war. This declaration is broad enough to include vessels of war, but the last part of the paragraph only speaks of "merchant vessels" as those that may freely enter and pass through the canal without molestation or detention. The next sentence, however, proclaims that "in general all vessels may pass through the canal freely, provided they pay the prescribed dues and observe the prescribed regulations established by the company."

But, further on in the same section, it is declared that "vessels of war" in time of peace will be subjected to "the conditions contained in treaties between Nicaragua and other powers, or those of international law," and, in time of war between Nicaragua or any of the Central American States, on the one side, and any other power or powers, on the other side, the vessels of war of the latter will be rigorously excluded from the canal. And, finally, the closing sentence of the sixth article sets forth that Nicaragua will endeavor to procure a guarantee of the neutrality of the canal, and of a zone along it, and of the sea on both oceans, from all the powers of the world, the limit and scope of such guarantee to be fixed in the treaties made with such powers respectively. Here, again, the concession appears to be in conflict with the purposes of the Government of the United States as announced by the Department of State under President Garfield and under President Arthur.

A fair construction of this sixth article would probably be that the commercial vessels of all nations are to freely navigate the canal in time of war and peace, provided they pay the dues, and observe the regulations established by the company; but vessels of war are at all times to be subjected to the conditions prescribed in treaties between Nicaragua and the nation whose flag a vessel of war may carry, or, in the absence of a treaty, then to the rules prescribed by international law. But if any government be at war either with Nicaragua or with any Central American State, then the public armed vessels of that government will be rigorously excluded from the canal.

There needs to be careful scrutiny to see whether or not the terms of this concession conflict in any manner with the stipulations of the treaty of 1867 between the United States and Nicaragua. By the fourteenth article of that treaty, Nicaragua, while reserving its sovereignty over the canal, grants to every vessel, lawfully wearing the flag of the United States, the right of transit through any canal which may be constructed under the authority of Nicaragua, which right is to be used and enjoyed in the same manner, and upon equal terms, by both republics and by their respective citizens. There is no distinction made by this article between commercial vessels and vessels of war. In addition to the stipulations in the fourteenth article, Nicaragua covenants and agrees, by the fifteenth article, that the United States shall be at liberty, on giving notice to the government or authorities of Nicaragua, to carry troops and munitions of war in their own vessels, or otherwise, to either of said free ports, and shall be entitled to their conveyance between them without obstruction by the government or authorities of Nicaragua, and without any charges or tolls whatever for their transportation on either of said routes, provided said troops and munitions of war are not intended to be employed against Central American nations friendly to Nicaragua. But, under the recent concession, the passage of the vessels of war belonging to the United States through the proposed canal may be prohibited by stipulations contained in a treaty between Nicaragua and any other power, or may be prohibited if it shall be decided that international law requires such prohibition in the absence of any treaty governing the question.

DEFINITION OF NEUTRALITY.

What does "neutrality" mean and imply, when the word is applied to an artificial water-way between two oceans, like the proposed canal at Nicaragua—that canal being entirely within the jurisdiction of that State? Many modern writers on international law insist that a neutral

government cannot permit an army of a belligerent to pass over its territory for a purpose of war, without abandonment of its neutrality. Nor can a neutral government permit belligerent cruisers to enter its ports except from stress of weather, or some such necessity as the obtaining of provisions and making the repairs requisite to seaworthiness. No acts of hostility can be permitted within neutral waters; nor can neutral waters be made a base of hostile operations elsewhere. Does the sixth article of the proposed concession refer to such a neutrality as that? If, unfortunately, war should be declared between the United States and Brazil, for example, would the public armed vessels of the United States be excluded from transit through the canal? In case of war between Nicaragua and Chili would the war vessels of Nicaragua be excluded from transit through the canal? If not of Nicaragua, then, under the treaty of 1867, would the war vessels of the United States be excluded, if, unhappily, there should be hostilities between the United States and Chili? It seems to me that these are questions which deserve careful consideration before the House shall adopt the proposed substitute.

The questions of international law involved in the proposed legislation are some of them as novel as they are important. What is the status in international law of the Suez Canal, which is situated entirely within the jurisdiction of one state, but has become an international highway, and is the property of a mercantile association whose domicile is in Paris? What, in the absence of a treaty definition, would be the status in international law, of a canal at Cape Cod, through the territory of Massachusetts, or of a canal through the territory of Florida, uniting the waters of the Atlantic Ocean and the Gulf of Mexico? Great Britain, by a note from Lord Derby to Lord Lyons, on May 16, 1877, intimated that any attempt to blockade or otherwise interfere with the Suez Canal, would be regarded by Her Majesty's government as a menace to India, and as a grave injury to the commerce of the world. "Any such step," said Lord Derby, "would be incompatible with the maintenance by Her Majesty's government of an attitude of pacific neutrality. * * * Her Majesty's government will expect that the Porte and the Khedive will, on their side, abstain from impeding the navigation of the canal, or adopting any measures likely to injure the canal or its branches; and they are firmly determined not to permit the canal to be made the scene of any combat or other warlike operations."

Without regard to the question whether or not the second article of the Clayton-Bulwer treaty is now in force, it may be interesting to note therein the plan of canal neutralization contained in the stipulation that "vessels of the United States or Great Britain, traversing the canal, shall, in case of war between the contracting parties, be exempted from blockade, detention, or capture, by either of the belligerents; and this provision shall extend to such a distance from the two ends of the said canal as it may hereafter be found expedient to establish." Does that plan, as does the Nicaragua concession, interdict the use of the canal by belligerents, or does it only forbid belligerents to make the canal the seat of war? It has been said that the true rule in respect to all artificial water-ways, uniting the waters of the oceans, which are free to all nations, would be to elevate them to the legal status of "arms of the sea," free to the vessels of all nations, at all times, on paying the prescribed tolls, whether they be vessels of war or vessels of peace, subject only to one condition, which is that no act of belligerency shall be permitted within the canal, or its prescribed ports at either end. But

if that is to be the rule, what nation is to act as a policeman and maintain order in the canal and its approaches? During the recent disturbance in Egypt, Italy proposed at Constantinople, as the spokesman of the four Eastern powers, to place the Suez Canal under the protection of an international maritime police. The suggested arrangement was temporarily adopted, and England and France united in proposing that the conference should designate the power to be charged, in case of need, to take the measures necessary for the protection of the canal. Under such an arrangement the nation that made the canal the place of a belligerent action would furnish every other nation with a *casus belli*.

It must be obvious that, when a canal, large enough to float vessels of war, shall have been successfully opened through the territory of the United States of Colombia or of Nicaragua, the obligations of neutrality imposed thereby on each of those states will have been enormously increased. At present the neutrality of the coasts of either is not likely to be invaded by war vessels of belligerent powers, but when there shall be such a water-way, that water-way will invite the presence of the armed vessels of warring nations seeking to go from one ocean to the other. If a neutral state claims to be a sovereign state, she must effectually restrain a foreign government and private individuals from using her territory for belligerent purposes. If a belligerent were injured in the canal, he would be justified in calling on the nation within whose jurisdiction the canal may be to make reparation in an appropriate case. If the belligerent is not permitted to protect himself in the canal he must look to the state controlling the canal for protection, and a foreign state, undertaking to guarantee the neutrality of the canal, would also be responsible under the guarantee for the injury. Would the existence in Panama or Nicaragua of a canal made "an arm of the sea," and capable of floating war vessels, relieve, in the absence of a treaty controlling the question, either state from the accepted, and oftentimes very burdensome, obligations of neutrality? Responsibility for acts of injury to a state committed in the canal, no matter by whom, must be a necessary consequence of the sovereignty upon which Colombia and Nicaragua so tenaciously insist. It may be that it is at the end of considerations like these that European governments have so many of them declined, as Mr. Evarts said, to enter into treaties of guarantee either with Colombia or Nicaragua.

The responsibility of guaranteeing the neutrality of a canal, either at Panama or at Nicaragua, is certainly American. It may be that such responsibility is not exclusively "American" in the sense of repelling all other states on this continent other than the United States of America, but it manifestly is "American" in a sense that includes the United States of America, Mexico, the states of Central America, the United States of Colombia, and the states of South America. If in the growth of the United States of America the dominion of the union were to extend southward from California, New Mexico, and Texas to the Isthmus of Darien, there would not be any serious question as to whose would be the right, duty, and obligation to police a canal at Panama or Nicaragua, to protect all vessels and citizens thereon, and to guarantee the neutrality thereof, whenever the United States saw fit to be neutral between other belligerent powers unhappily engaged in war.

FIDELITY TO TREATIES.

I do not fail to keep in mind that, by the Constitution, the House of

Representatives has primarily nothing to do with the making of treaties, the appointment of foreign ministers, the abrogation of treaties, and the general conduct of the diplomatic business of the United States, unless and until those treaties, or those appointments, or that business shall demand an appropriation of the public money or a pledge of the public credit. If there is any doubt whether or not the first seven articles of the Clayton-Bulwer treaty are now in force, or whether the eighth article of that treaty applies to the proposed Nicaragua canal, it is primarily the duty of the President and the treaty-making powers to deal with and dispose of that question. It is believed, and it is to be hoped, that the President will not fail to appreciate how important to the maintenance of the peace of the world and to the prosperity of the United States is a perfect and unshrinking fidelity to all the obligations imposed or implied by treaty stipulations made by the United States, so long as those stipulations are in force. The people of the United States have not heretofore been especially reticent and reserved in denunciation of the conduct of other nations when any of those nations have seemed to be disposed to rupture and tear up binding treaties without the consent of the other contracting parties. The general responsibility, however, of deciding whether a treaty is in force, in whole or in part, is upon the Executive and the Senate, and not upon the House of Representatives. And yet how can a member of Congress form a correct opinion whether the proposed substitute ought to be adopted without carefully considering the condition of the treaty relations of the United States with Great Britain as well as with Nicaragua? Does the President intend to use the diplomatic pressure of this government in order to prevent any European government from entering into treaty stipulations with Nicaragua to guarantee the proposed canal, as is suggested in the recent concession made by Nicaragua?

JUSTICE TO THE SPANISH-SPEAKING REPUBLICS.

The proposed canal is to be built entirely within the jurisdiction of Nicaragua, just as the Panama canal is to be built entirely within the jurisdiction of the United States of Colombia. The Spanish-speaking republics and governments to the south of us are deeply interested in a canal across the Isthmus, and their wishes in respect to the political control of such a canal are entitled to kind and even generous consideration by the Government of the United States. It certainly becomes the Government of the United States, as the most powerful, in its present strength and in its future possibilities, of any government on this continent, to treat its neighbors to the south of it in conformity with a standard of justice so absolute and perfect as to defy reasonable criticism.

For all of the foregoing reasons, and especially on account of the confusion and uncertainty which now exists in the treaty relations between this government and other governments respecting the guarantee of the neutrality and innocent use of the proposed canal, I am constrained to withhold my assent from the recommendation made by a majority of the Foreign Affairs Committee that the substitute be adopted by the House.

CARRIAGE OF PASSENGERS BY SEA.

JULY 21, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. GUENTHER, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 6722.]

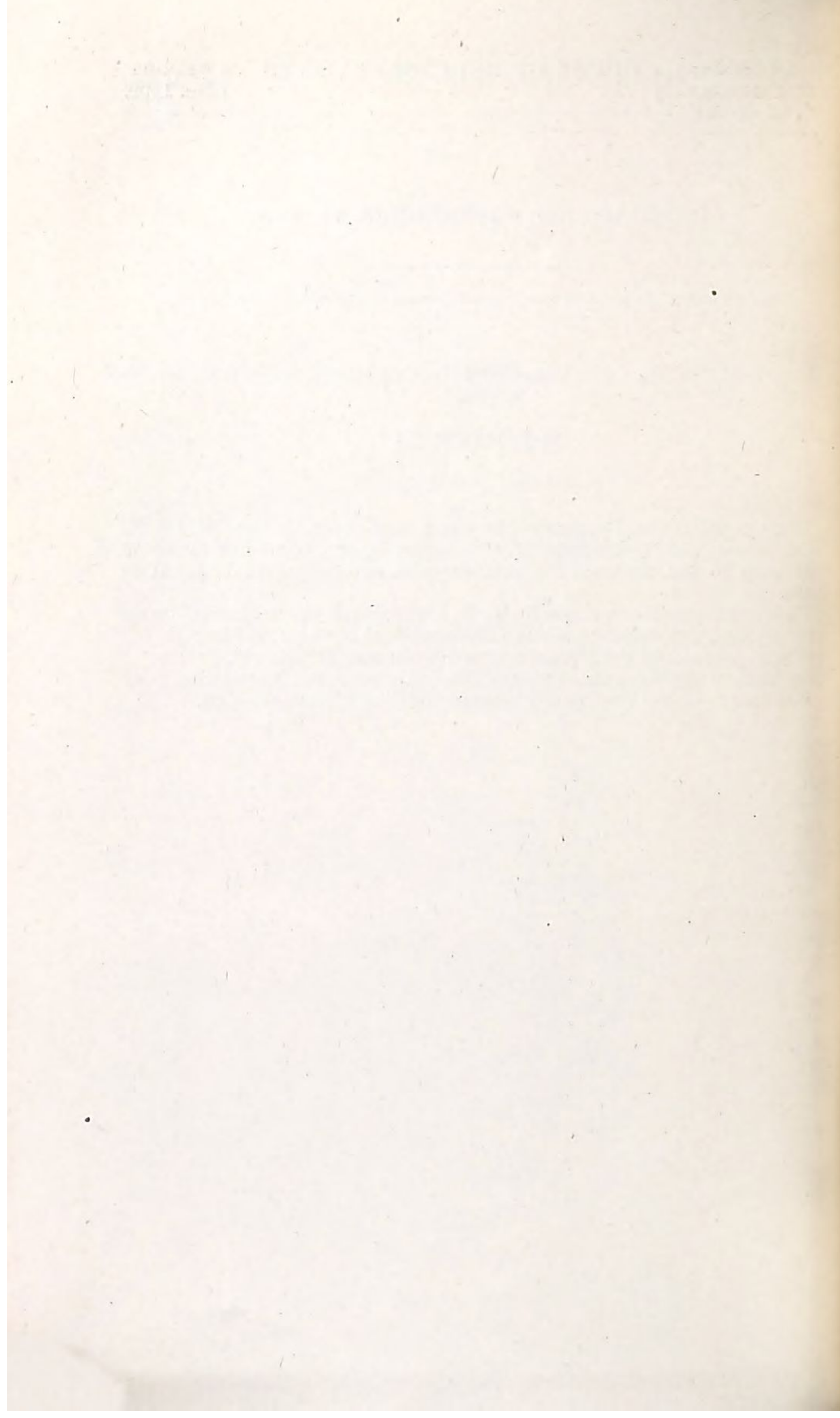
The Committee on Commerce, to whom was referred the bill (H. R. 6722) to regulate the carriage of passengers by sea, beg leave to report the same to the House with amendments, and recommend that it do pass.

This bill is similar to the bill (H. R. 2744) which passed both Houses of Congress, but failed to receive the approval of the President.

The objections of the President have been met in this bill.

In view of the recognized necessity of this proposed legislation, your committee hope for the speedy passage of this bill as amended.

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GEORGE W. STEWART.

JULY 21, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. McCook, from the Committee on Military Affairs, submitted the following

R E P O R T :

[To accompany bill H. R. 4641.]

The Committee on Military Affairs, to whom was referred bill H. R. 4641, submit the following report :

The committee, having had under consideration the petition and papers of the applicant in this case, respectfully state that in March, 1813, George W. Stewart, the petitioner, at Utica, in the State of New York, enlisted in the Thirteenth Regiment New York Infantry (which was then in the service of the United States) in the company then commanded by Capt. Malcomb Martin.

Petitioner was in the engagements of Fort George and Little York, and in the battle of Williamsburgh, where he was wounded in the left arm; he was also in the battles of Odeltown (Lower Canada) and of Plattsburgh, N. Y.

Soon after this the said company was sent to Green Bay, to hold in check the Indians, and under Captain Perry, then commanding, petitioner marched with the company on its way one and one-half days, and then, being found unable to proceed, was left at Chateaugay for care and treatment, and the company proceeded west.

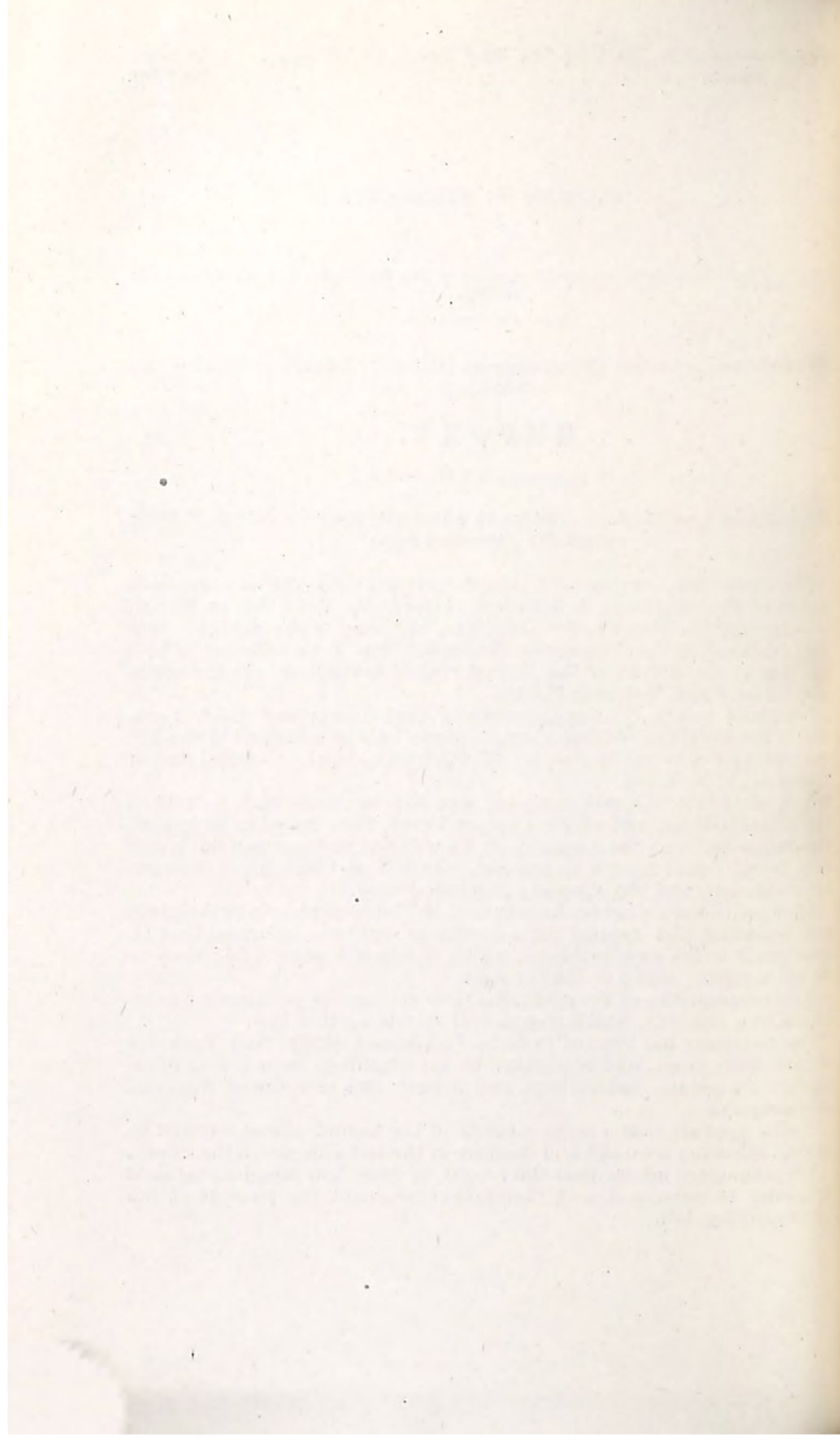
After petitioner's recovery he returned to Plattsburgh, where the Sixth still remained, and applied for a discharge, but was informed that he must apply to his own regiment, which it was not practicable then to do, his company being at the far west.

As a consequence of the confusion thus arising the petitioner was reported as a deserter, which record still stands against him.

The petitioner has resided in Saint Lawrence County, New York, for the last forty years, and is certified by his neighbors to be a man of integrity, temperate, industrious, and honest, and in reduced financial circumstances.

It also appears that a large cicatrix of the wound above referred to exists, indicating a wound and fracture of the left arm above the elbow.

The committee advise that the record of desertion standing against petitioner be corrected, and therefore recommend the passage of the accompanying bill.



STAR-ROUTE TRANSPORTATION.

JULY 21, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. BINGHAM, from the Committee on the Post-Office and Post-Roads,
submitted the following

REPORT:

[To accompany bill H. R. 6339.]

The Committee on the Post-Office and Post-Roads, to whom was referred the bill (H. R. 6339) repealing section 3961 of the Revised Statutes and the proviso of section 2 of the act providing for a deficiency in the appropriation for the transportation of mails on the star-routes, submit the following report:

Your committee, having duly considered this bill (H. R. 6339), would respectfully recommend its passage, for reasons set forth in the letter of the Acting Second Assistant Postmaster-General, herewith appended:

POST-OFFICE DEPARTMENT,
OFFICE OF SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., May 22, 1882.

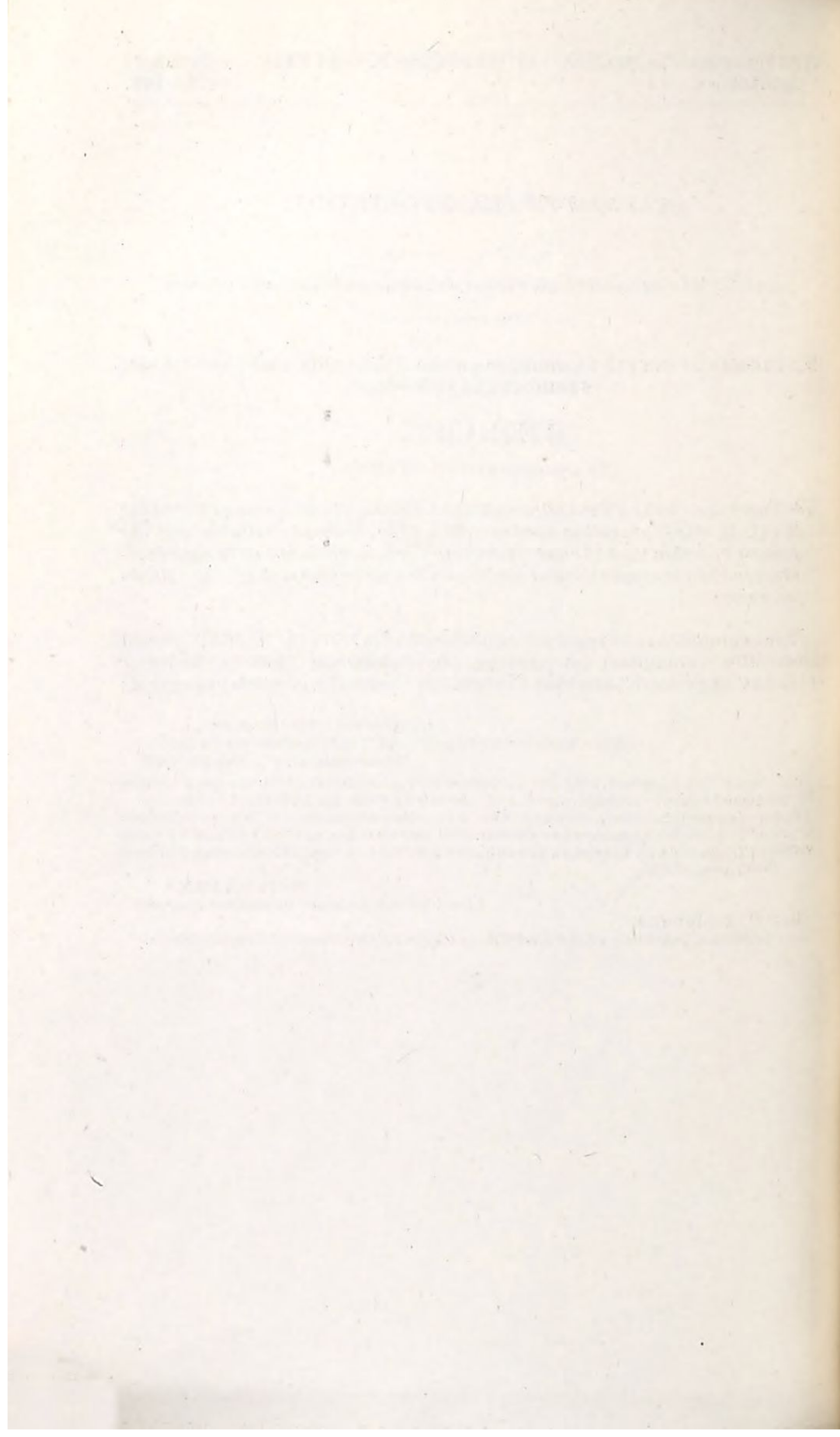
SIR: Herewith I transmit for your consideration a draft of a bill to repeal section 3961, Revised Statutes, and the proviso of section 2 of the act of April 7, 1880.

In many cases applications for expedition have their origin in the labors of contractors, and if it becomes necessary to expedite mail service it can as well be done by re-advertising the routes and opening the improved service to competition among bidders.

Very respectfully,

H. D. LYMAN,
Acting Second Assistant Postmaster-General.

Hon. H. H. BINGHAM,
Chairman Committee on the Post-Office and Post-Roads, House of Representatives.



BIDDERS ON MAIL ROUTES.

JULY 21, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. BINGHAM, from the Committee on the Post-Office and Post-Roads,
submitted the following

REPORT:

[To accompany bill H. R. 6719.]

The Committee on the Post-Office and Post-Roads, to whom was referred the bill (H. R. 6719) to amend section 3953 of the Revised Statutes, submit the following report:

Your committee, having duly considered this bill (H. R. 6719), would respectfully recommend its passage, for reasons set forth in the letter of the Second Assistant Postmaster-General hereto appended:

POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., June 16, 1882.

SIR: In reply to your letter of the 14th instant, requesting my views in regard to the repeal of the law requiring certified checks to accompany certain proposals for postal service, I have the honor to state that I deem it advisable to repeal said law, and to call your attention to the bill for that purpose recently introduced in the Senate by Hon. N. P. Hill.

I inclose herewith the forms of proposals for the performance of service adopted by the department to meet the requirements of the acts of July 2, 1836, June 8, 1872, June 23, 1874, and August 11, 1876, marked, respectively, Exhibits A, B, C, and D.

By reference to Exhibit A, you will see that the only security the department required of a bidder was that of two guarantors that he would, if his bid were accepted, enter into the required contract for the performance of the service.

The only evidence of the ability of the guarantors to make good their guarantee was the certificate of a postmaster. There was no bond required with the bid or the contract. It was then a very easy matter to secure the acceptance of a worthless proposal at a rate of pay entirely inadequate for the service required. After awards had been made, the records containing the names of bidders and the amounts of their bids were open to public inspection.

The guarantee on the proposal (Exhibit A) provides for the execution of contract by the accepted bidder prior to the day on which the service was to be commenced. The execution of contract on the day preceding the date on which service was to be begun met the requirement when that form of proposal was in use. Therefore the department had no means of determining whether an accepted bid had been made in good faith until the date service to be commenced.

When an accepted bidder failed to begin service, offers to contract were sent to all other bidders for the service whose bids were deemed not too high.

The highest bidder to whom an offer was sent might secure the contract at the rate of his bid by inducing the lower bidders not to accept the offers of the department. Great loss to the government was the result of the acceptance of worthless proposals.

To remedy this evil the act of June 8, 1872 (Rev. Stat., sections 3945 and 3953), provides that every proposal shall be accompanied by an oath of the bidder (see Exhibit B) as to his ability to fulfill his obligation, and that certain proposals shall be accompanied by certified checks or drafts on some solvent national bank.

While this law reduces the number of worthless bids submitted, it did not destroy the practice of straw-bidding.

The act of June 23, 1874, provides that every bid shall be accompanied by a bond of the bidder, with sureties approved by a postmaster, for the execution of the contract within a prescribed time, and the performance of the service, if the bid be accepted. As an additional safeguard, the sureties were required to subscribe to the oath on the form of proposal marked Exhibit C.

The act of August 11, 1876 (19 Stat., p. 129), requires the sureties to answer under oath the interrogatories shown in Exhibit D.

Section 3953 of the Rev. Stat. provides that if a contract duly executed, and the service be entered upon to the satisfaction of the Postmaster-General, the certified checks deposited with bids shall be returned to the respective bidders. It is the custom to return these checks as soon as reports of commencement of service are received from both ends of the route.

Therefore, the checks afford no security whatever for the performance of service for a longer period than is required to convey the reports of postmasters on the route to this office; but they are additional security for the execution of contracts within the time prescribed by the department, and for the commencement of service. This is a disadvantage to the department.

The date fixed for the execution of contracts is from fifteen to fifty days prior to the time the service is to be commenced.

If an accepted bidder fail to execute contract within the prescribed time, the route is awarded to the next lowest bidder, if his bid be deemed a reasonable one.

The commencement of service by a contractor releases all other bidders; and, if the service be afterwards abandoned, the government sustains a greater loss in reletting the route than would have resulted from a failure to execute contract.

When a contractor on a check route fails, the failure generally occurs after the department has surrendered his check; in fact, only two cases of forfeiture of check have occurred. The only indemnity the government has is the bond of the contractor. This it would have if no check whatever were required.

The present requirement of a certified check with every proposal on certain routes restricts bidding for service on said routes to persons within the vicinity of national banks, debar many persons from bidding who have ample means to perform the service, involves the payment of interest by bidders for a period of six to eight months, and doubtless increases the cost of service.

Very respectfully,

RICH'D A. ELMER,
Second Assistant Postmaster-General.

Hon. HENRY H. BINGHAM,
House of Representatives, Washington, D. C.

EXHIBIT A.

Proposal.

The undersigned, ———, whose post-office address is ———, county of ———, State of ———, proposes to convey the mails of the United States, from July 1, 1870, to June 30, 1874, on Route No. ———, between ——— and ———, under the advertisement of the Postmaster-General, dated October 30, 1869, "with celerity, certainty, and security,"* for the annual sum of ——— dollars.

This proposal is made with full knowledge of the distance of the route, the weight of the mail to be carried, and all other particulars in reference to the route and service; and also after careful examination of the laws and instructions attached to the advertisement.

Dated ———.

Guaranty.

The undersigned, residing at ———, State of ———, undertake that, if the foregoing bid for carrying the mail on Route No. ——— be accepted by the Postmaster-General, the bidder shall, prior to the 1st day of July, 1870, enter into the required obligation, or contract, to perform the service proposed, with good and sufficient sureties.

This we do understanding distinctly the obligations and liabilities assumed by guarantors under the 27th section of the act of Congress of July 2, 1836.

Dated ———.

Certificate.

The undersigned, postmaster at ———, State of ———, certifies, under his oath of office, that he is acquainted with the above guarantors, and knows them to be men of property, and able to make good their guaranty.

Dated ———.

* See act of Congress of March 3, 1845, sec. 18.

The proposal must be *signed* by the bidder, or bidders, the guaranty by not less than two guarantors, and the certificate by a postmaster or a judge of a court of record.

Send by *mail* direct to the "Second Assistant Postmaster-General, Post-Office Department, Washington, D. C.," marked "Proposals, State of Tennessee."

Proposals designating modes of conveyance, such as "two-horse coach," "buggy," "covered wagon," &c., &c., vitiates the bid, by decision of the Attorney-General.

EXHIBIT B.

Proposal.

The undersigned, ———, whose post-office address is ———, county of ———, State of ———, proposes to convey the mails of the United States from July 1, 1873, to June 30, 187—, on Route No. ———, between ——— and ———, under the advertisement of the Postmaster-General, dated December 1, 1872, "with celerity, certainty, and security" (law of June 8, 1872), for the annual sum of ——— dollars.

This proposal is made with full knowledge of the distance of the route, the weight of the mail to be carried, and all other particulars in reference to the route and service; and, also, after careful examination of the laws and instructions attached to advertisement of mail service.

Dated ———.

———, Bidder.

Guarantee.

The undersigned, residing at ———, State of ———, undertake that, if the foregoing bid for carrying the mail on Route No. ——— be accepted by the Postmaster-General, the bidder will, prior to the 1st June, 1873, enter into the required obligation, or contract, to perform the service proposed, with good and sufficient sureties. This we do, understanding distinctly the obligations and liabilities assumed by guarantors.

Dated ———.

———
———

(On the right-hand side of the page:) See oath on back of this sheet.

Certificate.

The undersigned, postmaster at ———, State of ———, certifies, under his oath of office, that he is acquainted with the above guarantors, and knows them to be men of property, and able to make good their guarantee; and that bidder and guarantors are above the age of 21 years.

———

(On the left-hand side of the page:) The postmaster must not sign the certificate until the sum of the bid is inserted, and the bid and guarantee signed by all the parties, and dated.

Section 247 of an act of Congress approved June 8, 1872, provides, "that any postmaster or other officer of the Post-Office Department, who shall affix his signature to the certificate of the sufficiency of guarantors or sureties before the guarantee or contract is signed by the guarantors or sureties, or shall knowingly make any false or illusory certificate, shall be forthwith dismissed from office, and shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both.

Bids of \$5,000 and upwards must be accompanied by a certified check or draft on some solvent national bank, equal to 5 per centum on the present annual pay on the route; or, in case of new service, not less than 5 per centum of one year's pay proposed in bid.—(Section 253, act of June 8, 1872.)

The proposal must be *signed* by the bidder or bidders, the guarantee by not less than two guarantors, and the certificate by a postmaster, and the mailing-stamp of his office must be affixed, showing the date of signing

Send by *mail* direct to the "Second Assistant Postmaster-General, Post-Office Department, Washington, D. C.," marked "Proposals, State of ———."

Oath required by Section 246 of an act of Congress, approved June 8, 1872, to be affixed to each bid for carrying the mail, and to be taken before an officer qualified to administer oaths.

I, ———, of ———, bidder for conveying the mail on Route No. ———, from ——— to ———, do swear that I have the ability, pecuniarily, to fulfill my obligation

as such bidder; that the bid is made in good faith, and with the intention to enter into contract and perform the service in case said bid shall be accepted; and that the signatures of the guarantors thereto are genuine, and that I believe the said guarantors to be pecuniarily responsible for and able to pay all damages the United States shall suffer by reason of my failing to perform my obligations as such bidder.

Sworn to and subscribed before me, _____, for the _____ of _____, this _____ day of _____, A. D. 187—, and in testimony thereof I hereunto subscribe my name and affix my official seal the day and year aforesaid.

[SEAL.] _____

NOTE.—When the oath is taken before a justice of the peace, the certificate of the clerk of a court of record should be added, under his seal of office, that the person who administered the oath is a duly qualified justice of the peace.

EXHIBIT C.

Proposals altered by erasures or interlineations of the route, the service, the yearly pay, or the name of the bidder, will not be considered.

Proposal.

The undersigned, _____, whose post-office address is _____, county of _____, State of _____, proposes to carry the mails of the United States from July 1, 1876, to June 30, 18—, on Route No. _____, between _____ and _____, State of _____, under the advertisement of the Postmaster-General, dated October 1, 1875, with "celerity, certainty, and security," for the annual sum of _____ dollars; and if this proposal is accepted he will enter into contract, with sureties to be approved by the Postmaster-General, within the time prescribed in said advertisement.

This proposal is made with full knowledge of the distance of the route, the weight of the mail to be carried, and all other particulars in reference to the route and service; and, also, after careful examination of the laws and instructions attached to advertisement of mail service.

Dated _____, 187—.

Bidder.

Oath required by section 245 of an act of Congress approved June 23, 1874, to be affixed to each bid for carrying the mail, and to be taken before an officer qualified to administer oaths.

I _____, of _____, bidder for carrying the mail on route No. _____, from _____ to _____, do swear that I have the ability, pecuniarily, to fulfill my obligation as such bidder; that the bid is made in good faith, and with the intention to enter into contract and perform the service in case said bid shall be accepted.

Sworn to and subscribed before me, _____ for the _____ of _____, this _____ day of _____, A. D. 187—, and in testimony thereof I hereunto subscribe my name and affix my official seal the day and year aforesaid.

[L. S.] _____

NOTE.—When the oath is taken before a justice of the peace or any other officer not using a seal, except a judge of a United States court, the certificate of the clerk of a court of record must be added, under his seal of office, that the person who administered the oath is duly qualified as such officer.

Bids must be accompanied by a certified check, or draft, on some solvent national bank, payable to the order of the Postmaster-General, equal to 5 per centum on the present annual pay on the route when the present pay exceeds \$5,000; or in case of new service, not less than 5 per centum of the amount of the bond accompanying the bid, if said bond exceeds \$5,000.

The proposal must be *signed* by the bidder or bidders, and the date of signing affixed.

Direct to the "Second Assistant Postmaster-General, Post-Office Department, Washington, D. C.," marked "Proposals, State of _____."

Bond.

DIRECTIONS.—Insert the names of the principal and sureties in full in the body of the bond; also the date. The signatures to the bond should be witnessed, and the certificate on the inside should be signed by a justice of the peace, adding his official title, or, if signed by a notary public, he should affix his seal.

Know all men by these presents, that _____ of _____, in the State of _____, principal, _____ and _____ of _____, in the State of _____, as sureties, are held and firmly bound unto the United States of America in the just and full sum of _____ dollars, lawful money of the United States, to be paid to the said United States of America, or its duly appointed or authorized officer or officers; to the payment of which, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this _____ day of _____, 187-.

Whereas, by an act of Congress approved June 23, 1874, entitled "An act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-five, and for other purposes," it is provided: "That every proposal for carrying the mail shall be accompanied by the bond of the bidder, with sureties approved by a postmaster," in pursuance whereof, and in compliance with the provisions of said law, this bond is made and executed, subject to all the terms, conditions, and remedies thereon, in the said act provided and prescribed, to accompany the foregoing and annexed proposal of the said _____.

Now, the condition of the said obligation is such, That if the said _____, bidder, as aforesaid, shall, within such time after his bid is accepted as the Postmaster-General has prescribed in said advertisement of route No. _____, to wit, on or before the 1st day of June, 1876, enter into a contract with the United States of America, with good and sufficient sureties to be approved by the Postmaster-General, to perform the service proposed in his said bid, and further shall perform said service according to his contract, then this obligation shall be void, otherwise to be in full force and obligation in law.

In witness whereof we have hereunto set our hands and seals this _____ day of _____, 187-.

_____. [SEAL.]
 _____. [SEAL.]
 _____. [SEAL.]
 _____. [SEAL.]

Witness:

_____.
 _____.

Any alteration, by erasure or interlineation of a material part of the foregoing bond, will cause it to be rejected, unless it appears by a note or memorandum, attested by the witnesses, that the alteration was made before the bond was signed and sealed.

When partners are parties to the bond, the partnership name should not be used, but each partner should sign his individual name.

STATE OF _____,
 County of _____, ss:

On this _____ day of _____ 187-, personally appeared before me _____, and _____ sureties in the foregoing bond, to me known to be the persons named in said bond as sureties, and who have executed the same as such, who being by me duly sworn, depose and say, and each for himself deposes and says, he has executed the within bond, that his place of residence is correctly stated therein, that he is the owner of real estate worth the sum hereinafter set against his name over and above all debts due and owing by him, and all judgments, mortgages, and executions against him after allowing all exemptions of every character whatever, the total sum thus assured amounting to (\$_____) _____ dollars, being double the amount of the foregoing bond.

_____, \$_____.
 _____, \$_____.
 _____, \$_____.

Subscribed and sworn before me this _____ day of _____, 187-.

[L. S.]

_____,
 _____.

NOTE.—When the above oath is taken before a justice of the peace, or any other officer not using a seal, except a judge of a United States court, the certificate of the clerk of a court of record must be added, under his seal of office, that the person who administered the oath is duly qualified as such officer.

STATE OF _____,
County of _____, ss :

I, _____, clerk of the _____, the same being a court of record, do hereby certify that _____, whose genuine signature appears to the foregoing affidavit, was, at the time of signing the same, a justice of the peace in and for the county and State aforesaid, duly qualified, and that all his official acts as such are entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand as clerk, and affixed the seal of said court, on this _____ day of _____, 187-.

[L. S.]

_____,
Clerk.

Certificate of postmaster.

I, the undersigned, postmaster at _____, State of _____, after the exercise of due diligence to inform myself of the pecuniary ability and responsibility of the principal and his sureties in the foregoing bond, and of the real estate owned by them, respectively, do hereby approve said bond, and certify that, in my belief, the said sureties are sufficient—sufficient to insure the payment of double the entire amount of the said bond; and I do further certify that the said bond was duly signed by _____ bidder, and _____ and _____, his sureties, before signing this certificate.

_____,
Postmaster.

Dated _____, 187-.

Postmasters will observe that the improper approval of the bond, or the certificate of the sufficiency of sureties therein, exposes them not only to dismissal, but also to fine or imprisonment.

EXHIBIT D.

Proposals altered by erasures or interlineations of the route, the service, the yearly pay, or the name of the bidder, will not be considered.

Proposal.

The undersigned, _____, whose post-office address is _____, county of _____, State of _____, proposes to carry the mails of the United States from July 1, 1877, to June 30, 1881, on route No _____, between _____ and _____, State of _____, under the advertisement of the Postmaster-General, dated October 1, 1876, "with celerity, certainty, and security," for the annual sum of _____ dollars; and if this proposal is accepted he will enter into contract, with sureties to be approved by the Postmaster-General, within the time prescribed in said advertisement.

This proposal is made with full knowledge of the distance of the route, the weight of the mail to be carried, and all other particulars in reference to the route and service; and, also, after careful examination of the forms and instructions attached to said advertisement.

Dated _____, 187-.

_____,
Bidder.

Oath required by section 245 of an act of Congress approved June 23, 1874, to be affixed to each bid for carrying the mail, and to be taken before an officer qualified to administer oaths.

I, _____, of _____, bidder for carrying the mail on route No. _____, from _____ to _____, do swear that I have the ability, pecuniarily, to fulfill my obligations as such bidder; that the bid is made in good faith, and with the intention to enter into contract and perform the service in case said bid shall be accepted.

Sworn to and subscribed before me, _____, for the _____ of _____ this _____ day of _____, A. D. 187-, and in testimony thereof I hereunto subscribe my name and affix my official seal the day and year aforesaid.

[L. S.]

NOTE.—When the oath is taken before a justice of the peace or any other officer not using a seal, except a judge of a United States court, the certificate of the clerk of a

court of record must be added, under his seal of office, that the person who administered the oath is duly qualified as such officer.

Bids must be accompanied by a certified check, or draft, on some solvent national bank, payable to the order of the Postmaster-General, equal to 5 per centum on the present annual pay on the route when the present pay exceeds \$5,000; or in case of new service, not less than 5 per centum of the amount of the bond accompanying the bid, if said bond exceeds \$5,000.

The proposal must be *signed* by the bidder or each of the bidders, and the date of signing affixed.

Direct to the "Second Assistant Postmaster-General, Post-Office Department, Washington, D. C.," marked "Proposals, State of ———."

NOTE.—Any alteration, by erasure or interlineation of a material part of the following bond, will cause it to be rejected, unless it appears by a note or memorandum, attested by the witnesses, that the alteration was made before the bond was signed and sealed.

When partners are parties to the bond, the partnership name should not be used, but each partner should sign his individual name.

Insert the names of the principal and sureties in full in the body of the bond; also the date. The signatures to the bond should be witnessed, and each signature must be opposite a separate seal.

Bond.

Know all men by these presents, that ———, of ———, in the State of ———, principal, ———, and ———, of ———, in the State of ———, as sureties, are held and firmly bound unto the United States of America in the just and full sum of ——— dollars, lawful money of the United States, to be paid to the said United States of America or its duly appointed or authorized officer or officers; to the payment of which, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this ——— day of ———, 187—.

Whereas, by an act of Congress approved June 23, 1874, entitled "An act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-five, and for other purposes," it is provided: "that every proposal for carrying the mail shall be accompanied by the bond of the bidder, with sureties approved by a postmaster," in pursuance whereof, and in compliance with the provisions of said law, this bond is made and executed, subject to all the terms, conditions, and remedies thereon, in the said act provided and prescribed, to accompany the foregoing and annexed proposal of the said ———, bidder.

Now, the condition of the said obligation is such, that if the said bidder, as aforesaid, shall, within such time after his bid is accepted as the Postmaster-General has prescribed in said advertisement, to wit, on or before the 1st day of June, 1877, enter into a contract with the United States of America, with good and sufficient sureties to be approved by the Postmaster-General, to perform the service proposed in his said bid, and further shall perform said service according to his contract: then this obligation shall be void, otherwise to be in full force and obligation in law.

In witness whereof we have hereunto set our hands and seals this ——— day of ———, 187—.

———. [SEAL.]
 ———. [SEAL.]
 ———. [SEAL.]
 ———. [SEAL.]

Witness:

———.
 ———.

INTERROGATORIES.

The following interrogatories are prescribed by the Postmaster-General, to be answered, under oath, by each of the sureties in the foregoing bond.

1. What amount in value of real estate is owned by you?
2. Of what description—town or city lots, improved or unimproved, or farming land, cultivated or uncultivated?
3. Where is it situated, and in what county and State does record-evidence of your title exist? (Answer on next page.)

Oaths of sureties.

STATE OF ———,
 County of ———, ss:

On this ——— day of ———, 187—, personally appeared before me ——— and ———, sureties in the foregoing bond, to me known to be the persons named in said bond as sureties, and who have executed the same as such, who being by me

duly sworn, depose and say, and each for himself deposes and says, he has executed the within bond, that his place of residence is correctly stated therein, that he is the owner of real estate worth the sum hereinafter set against his name over and above all debts due and owing by him, and all judgments, mortgages, and executions against him after allowing all exemptions of every character whatever, the total sum thus assured amounting to (\$——) —— dollars, being double the amount of the foregoing bond.

And in answer to the foregoing interrogatories each of the said sureties further deposes and says that the value, description, and location of his real estate is as follows:

Names of sureties.	Value of real estate.	Description of real estate. (As required by interrogatory No. 2.)	Where located, and record-evidence of title.

———, \$——.
———, \$——.

Subscribed and sworn before me this —— day of ——, 187—.
[L. S.]

———
———

NOTE.—When the above oath is taken before a justice of the peace, or any other officer not using a seal, except a judge of a U. S. court, the certificate of the clerk of a court of record must be added, under his seal of office, that the person who administered the oath is duly qualified as such officer. If the oath is taken before a notary public and his seal is affixed the certificate of the clerk of a court is not necessary.

Certificate of postmaster.

I, the undersigned, postmaster at ——, State of ——, after the exercise of due diligence to inform myself of the pecuniary ability and responsibility of the principal and his sureties in the foregoing bond, and of the real estate owned by them, respectively, do hereby approve said bond, and certify that, in my belief, the said sureties are sufficient—sufficient to insure the payment of double the entire amount of the said bond; and I do further certify that the said bond was duly signed by ——, bidder, and —— and ——, his sureties, before signing this certificate.

———
Postmaster.

Dated ——, 187—.

Postmasters will observe that the improper approval of the bond, or the certificate of the sufficiency of sureties therein, exposes them not only to dismissal, but also to fine or imprisonment.

TRUSTEES OF THE MOUNT SAVAGE IRON COMPANY.

JULY 21, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CHAPMAN, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 6803.]

The Committee on War Claims, to whom was referred the bill (H. R. 2446) for the relief of the trustees of the Mount Savage Iron Company, report as follows:

This claim is for 333 tons of railroad iron, taken by the military and naval forces of the United States for the use of the Army and Navy, at Alexandria, La., in 1864, stated at \$20,979.

It appears from the proof submitted that the claimants filed their claim before the Commissioners of Claims for adjudication and settlement, and from whom a report was made, which is herewith presented and made a part of this report:

The Mount Savage Iron Company was incorporated under the laws of the State of Maryland about the year 1847. Its business of mining ore and manufacturing iron was carried on at Mount Savage, Alleghany County, Maryland. When the war broke out the directors of the company were Franklin H. Delano, John F. Winslow, and Joseph B. Varnum, of New York, and John M. Forbes, of Boston. John A. Graham, of New York, was president.

On the 17th of November, 1859, Thomas C. Bates, of Rochester, N. Y., had entered into a contract to furnish the El Paso Pacific Railroad Company with a quantity of railroad iron. On the 3d day of February following, said Bates and the Mount Savage Iron Company entered into an agreement whereby said company agreed to furnish the said railroad iron (iron rails) to said railroad company at \$55 per ton, delivered in Cumberland ready for shipment to Wheeling; from there the iron was to be shipped to Moore's Landing, in the State of Texas, the title to the iron to remain in the Mount Savage Iron Company until they were fully paid therefor.

Under that contract and agreement 486 tons of railroad iron was manufactured and sent to Wheeling by railroad, and was there shipped on board the steamer Saracen by the agents of the claimant. The steamer proceeded as far as the Red River, and there, at Alexandria, La., the boat grounded. The transportation was paid by the claimant from Mount Savage to Wheeling—about \$7 per ton. The transportation down the river to Alexandria was not paid. The claimant tendered payment for this transportation to release it from the freighter's lien. A claim was made against the claimant for salvage, which was not admitted. It is an unsettled matter between the shipper and the freighter.

In February, 1861, this iron was unloaded from the steamer and piled on the bank of the river at Alexandria. The claimant subsequently recovered about 53 tons of this iron and payment for about 100 tons, which appears to have been taken by the rebel steamer Missouri, leaving 333 tons unaccounted for. It is proved that this iron, as late as 1864, was lying on the bank of the river, and was then taken and used by the Federal forces in the construction of the dam which was erected to enable the fleet under Commodore Porter to descend the river. The claimant never recovered any portion of this 333 tons of iron, nor any pay for it. The Mount Savage Iron Company

was solvent. The president and directors were all loyal and solvent. The corporation has been dissolved, and its assets passed into the hands of Franklin H. Delano and John A. Graham as trustees.

The value of the iron at Alexandria is uncertain. The cost at that point, adding cost of transportation to contract price, was about \$80 per ton. The only important question of fact not determined by the proofs is the quantity of iron left on the river bank in 1864, and used by the Federal forces. Two hundred and eighty-six tons is claimed; why that amount, is not disclosed by the evidence. We have thought proper to make this statement of the claim in case Congress was disposed to compensate the claimant. The claim being made by a corporation, we have no jurisdiction in the premises. It is therefore disallowed.

Your committee are not satisfied that the claim is proved so unquestionably as to the amount of iron used, and so explicitly as to absolute use by the Army and Navy as it should be to warrant the payment of so large a sum of money. And still, your committee are of opinion that something is due the company from the government. Your committee therefore recommend that this claim be referred to the Quartermaster-General for adjudication, and report a substitute for the bill (H. R. 2446) and recommend its passage.

○

GENERAL ALFRED PLEASONTON.

JULY 24, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BAYNE, from the Committee on Military Affairs, submitted the following

R E P O R T :

[To accompany bill H. R. 5525.]

The Committee on Military Affairs, to which was referred the bill (H. R. No. 5525) authorizing the President to appoint and retire Alfred Pleasonton, a major-general, respectfully reports :

Alfred Pleasonton graduated at the West Point Military Academy in 1844, and was appointed a brevet second lieutenant in the Army, and assigned to Captain Sumner's (afterward General Sumner) company of the First Regiment of United States Dragoons, which was stationed at Fort Atkinson, Iowa Territory. In 1845 he was one of the command under Sumner that marched to Devil's Lake, near the Canada line, to warn the Canadian half-breeds from coming into the United States to hunt buffalo and disturb our Indians. The expedition was successful, and accomplished a march of 3,000 miles in five months.

In the spring of 1846, Pleasonton, having been promoted to be second lieutenant of the Second Regiment of Dragoons, joined Captain May's company of that regiment, at Corpus Christi, Tex., as part of the army of occupation under General Taylor. In the battles of Palo Alto and Resaca de la Palma he was distinguished, and was brevetted on the recommendation of General Taylor for his conduct in the charge of May's squadron of dragoons at Resaca de la Palma, which resulted in the capture of General La Vega, many prisoners, and a battery of nine guns. He served with the army of General Taylor to the end of the Mexican war, and then marched with his company from Monterey, Mexico, to Santa Fé, N. Mex., in the fall of 1848. After very active service in that Territory during the winter, he proceeded in the spring of 1849 to join the staff of General Persifor F. Smith, in California, and marched across the country from Santa Fé to San Francisco, with a small detachment of men, by the way of Colorado and Utah.

Pleasonton remained in California until 1850, when, having been promoted to be first lieutenant, he returned to New Mexico and was placed in command of his company. His service for the next two years brought him in contact with the Apaches, the Navajoes, and the Utah Indians of that country, and in numerous campaigns and engagements against these Indians he learned the rough art of savage warfare.

In 1852 he was ordered on the recruiting service, where he remained until 1854, when he was appointed the adjutant of his regiment, and repaired to Fort Chadbourne, Texas, where he remained until the winter

of 1855, when he was promoted to a captain. He joined the expedition against the Sioux Indians, commanded by General Harney, at Fort Leavenworth, Kansas, in the spring of that year, and served with the expedition, in command of his company, until the winter of 1856, when he was appointed the assistant adjutant-general of the expedition, and remained in that capacity until the Indians made peace in that summer.

In the fall of 1856, Pleasonton was selected by General Harney as his adjutant-general on an expedition to remove the Seminole Indians from Florida. The winter was spent in a hard and severe campaign against these Indians in the swamps and everglades, which resulted in their complete defeat, and they were removed to Arkansas in the spring of 1857.

Serious political troubles occurring at this time in Kansas, General Harney was ordered to the command of the troops in that Territory, and Captain Pleasonton accompanied him as adjutant-general. It was in the summer of this year that the Utah expedition was organized by General Harney and his staff, and was afterwards placed under the command of General Albert Sidney Johnston.

In the fall of 1858, an Indian war breaking out in Oregon, General Harney was ordered there to take command, and Pleasonton was assigned to him as his chief staff officer. The Indians were brought to terms during the ensuing winter, and the country was in a state of profound peace in the summer of 1859 and until 1860, when General Harney was relieved from duty in Oregon, and Pleasonton returned with him to Washington.

In March, 1861, General Scott ordered Pleasonton to join his company, then at Camp Floyd, in Utah. He proceeded as far as Saint Joseph, Mo., and was detained there for want of transportation, when the news of the firing on Fort Sumter satisfied him it was his duty to return to the East. On arriving in Philadelphia he found Washington was cut off from the North, and that the government had placed General Patterson in command of the Department of Washington, extending from Philadelphia to Washington. Pleasonton immediately reported to him, and was sent to Wilmington, Del., to raise a force to protect the railroad to Havre de Grace, and also Dupont's powder-mills, which contained at that time the materials belonging to the government for making powder at the rate of 30,000 pounds a day for a period of eighteen months. He succeeded in less than a week in organizing, arming, and equipping a regiment of 1,000 men; but upon application being made by the regiment to General Scott to permit Pleasonton to accept the command of it, Scott's only reply was an order for Pleasonton to join his company in Utah. Pleasonton obeyed the order. He could have resigned from the Army and accepted the colonelcy of the regiment; but as the government at that time was in the throes of a civil war, he considered it his highest duty to obey its behests.

Shortly after his arrival in Utah the news of the battle of Bull Run was received, and also orders for the troops to proceed to Washington. Pleasonton reached Washington in command of his regiment, the Second Dragoons, in the fall of 1861, having marched 1,100 miles, from Utah to Saint Joseph, Mo., and then transported the men and horses of the command about the same distance by rail to Washington.

When the Army of the Potomac moved to Yorktown, Pleasonton's regiment of dragoons formed part of it, and served with headquarters and on detached service throughout that campaign, sometimes covering a retreat, sometimes in advance, but rendered such efficient service that upon the arrival of the Army at Harrison's Landing Pleasonton was

promoted to be a brigadier-general of volunteers, his rank at that time in the Regular Army being that of major. A few days after his assignment to the command of a brigade of cavalry, he distinguished himself in the second battle of Malvern Hill, capturing many prisoners and showing his ability to fight cavalry in large masses. He covered the retreat of the Army from the Chickahominy, and was among the last to embark from Yorktown to Washington. On his arrival at Washington, General McClellan assigned him to the command of all the cavalry and horse artillery of the Army; and it was from this time that the Union cavalry began its career of distinction and glory which it held to the close of the war. Starting in advance of the Army from Washington, with only one brigade of cavalry and two batteries of horse artillery, Pleasanton defeated the enemy at Poolesville, Barnesville, Frederick City, and brought him to bay at South Mountain. He reconnoitered that position, and finding two mountain roads, one to the north, and the other to the south of it, he suggested turning the enemy by both flanks, which was afterward successfully accomplished by the Army. Rapidly pursuing, immediately after the battle, with the cavalry, he overtook the enemy's cavalry near Boonesville, and, after a fierce fight, defeated them with severe loss, forcing his way to the main body on Antietam Creek, at Sharpsburg. While thus actively engaged, Pleasanton found time to organize his scattered cavalry, and had shown such energy and judgment in doing so that he collected 4,000 cavalry and formed them into four brigades, and with four batteries of horse artillery he held the center of the Union position throughout the battle of Antietam. He took the advance of the Army into Virginia after the battle, fighting the enemy's cavalry at Martinsburg, Purcellville, Union, Upperville, Barber's Cross Roads, Waterloo, and other places, being invariably successful.

In the campaign of Fredericksburg he commanded the first division of cavalry, on duty with the first grand division of the Army, commanded by Major-General Sumner. The battle of Fredericksburg virtually finished that campaign.

In the campaign of Chancellorsville, Pleasanton went into the field with one small brigade of cavalry of three regiments and one horse battery, but it was his good fortune to be at the critical part of the field at the proper time; that is, where the Eleventh Corps became panic-stricken and ran away when Stonewall Jackson attacked them, on the 2d of May, 1863. In reference to this action the Joint Committee of the two Houses of Congress on the Conduct of the War report as follows:

About 6 o'clock in the afternoon a rattling fire of musketry was heard on the right, but nothing indicating a very serious engagement. Almost immediately, however, from some cause not fully evident from the testimony, the extreme right division of the Eleventh Corps was stampeded, and, flying along the line of the Eleventh Corps, threw the whole corps into confusion and swept it from the field. Steps were at once taken to arrest the fugitives and prevent the panic being extended to the whole Army. Berry's division of the Third Corps and a brigade of the Second Corps were directed to cover the rear of the Eleventh Corps, and, if possible, to retake and hold the position they had abandoned. This, however, they were unable to do, the enemy occupying it in great force before our troops could reach it.

It will be remembered that some hours before, General Sickles, with two divisions of his corps, had been ordered to advance for the purpose of operating against the column of the enemy under Jackson. The giving way of the right left General Sickles in a very exposed and critical position; but upon being informed of the condition of affairs, he at once took measures to withdraw his force, which was successfully done, and without much loss. The enemy, under Jackson, continued to advance after the panic stricken troops, until checked by General Pleasanton, who had collected and brought into position some artillery for that purpose. Although a cavalry officer, he handled the artillery with exceeding great judgment and effectiveness. His skill,

energy, daring, and promptness upon this occasion contributed greatly to arrest the disaster which for a time threatened the whole Army. His conduct upon this and many other occasions marks him as one of the ablest generals in our service, and as deserving of far higher consideration than, from some cause, he appears to have received. It was during this attack the rebel General Jackson was mortally wounded. The enemy were repulsed with great loss, and active operations ceased for the night.

Pleasanton was now placed in command of the cavalry corps of the Army of the Potomac by Major-General Hooker, and the campaign of Gettysburg was opened by his crossing the Rappahannock and attacking the enemy's cavalry, under Stuart, at Beverly Ford and Brandy Station, on the 9th of June, 1863. He had 6,000 cavalry, 3,000 infantry, and 36 pieces of artillery. Stuart had 18,000 cavalry and upwards of 40 pieces of artillery. The battle began at 5 o'clock in the morning, and lasted until 7 o'clock in the evening. By this action Pleasanton ascertained the design of General Lee of moving into Pennsylvania, having captured official correspondence indicating the movement. The loss of the Union cavalry on that day was 1,000 men, but the loss of the enemy's cavalry was much greater, stated to have been 2,500 men. Moving rapidly from Beverly Ford to Aldie, in the Bull Run Mountains, the enemy were met and again defeated, and pursued to Middleburg and Upperville, and finally driven over the Blue Ridge Mountains. It was after the battle at Upperville that President Lincoln appointed Pleasanton a major-general of volunteers, to date from June 22, 1863.

At Frederick City, Pleasanton, finding the enemy's cavalry so superior in numbers, applied for and obtained another division of cavalry from Washington, to which he promoted his aides-de-camp, Custer and Farnsworth, to be brigadier-generals. Lee was at this time moving his army towards Chambersburg. The Army of the Potomac was put in motion by General Meade in the direction of Columbia and the Susquehanna River. The cavalry was placed to cover its front and flanks. The first division, under General Buford, was ordered by Pleasanton to Gettysburg, to hold that position at all hazards; the second division, under General Gregg, moved on the right of the Army, and the third division, under General Kilpatrick, in front towards Harrisburg.

At Hanover the third division struck Stuart, laden with plunder, which was recaptured and the enemy driven off with great loss.

At Gettysburg General Buford met the enemy on the morning of the 1st of July, 1863, and with the first division fought so hard to hold the position that he urged the necessity for the whole Army to support him, if it was expected we should retain it. Accordingly, the different corps of the Army were marched in that direction, and the result was the battle of Gettysburg.

The cavalry throughout that battle protected the flanks of the Army, and sustained very severe losses in so doing, and followed in pursuit of the enemy immediately after the battle.

In the winter of 1864 the Committee of the two Houses of Congress on the Conduct of the War called upon the different generals for their views with reference to the prosecution of the war in the next campaign. The members of the committee were so much impressed with the plan submitted by Pleasanton that they recommended to President Lincoln to place him in command of the Army of the Potomac, give him the men and material he required, and hold him responsible to execute that plan. The President was favorably inclined to do so, but other influences prevented its consummation, and the result was that in the spring of 1864 Pleasanton was ordered to the Department of Missouri, at Saint Louis. In the fall of that year the States of Missouri and Kansas were invaded

by General Sterling Price with a greatly superior force of cavalry and artillery to that which could be put into the field by the Federal commander, Maj. Gen. William S. Rosecrans. In his official report General Rosecrans describes the results of that campaign as follows :

With less than 7,000 effective cavalry, have pursued, overtaken, beaten in several engagements, and finally routed an invading cavalry, variously estimated at from 15,000 to 20,000 men, reinforced by 6,000 armed recruits from Missouri, taken from them ten pieces of artillery, two stands of colors, 1,958 prisoners of war, a large number of horses, mules, wagons, and small-arms, compelled them to destroy most of their remaining wagon trains and plunder, blasted all the political schemes of the rebels and traitors who concerted with Price to revolutionize Missouri, destroy Kansas, and turn the State and Presidential elections against the Union cause, and by one triumph in the late elections have given to gallant and suffering Missouri the fairest prospect she has ever yet seen of future freedom, peace, and prosperity—all the fruit of a campaign of forty-eight days, in which most of our victorious troops had never before seen a great battle. Rarely, during this or any war, has cavalry displayed more persevering energy in pursuit, more impetuous courage and gallantry in attacking, regardless of superior numbers, or had its efforts crowned with greater fruits of success. Major-General Pleasanton deserves the thanks of the country for the able manner in which he handled and fought the cavalry, and the brilliant and fruitful victories he won over triple his own force. I hope he may receive promotion in the Regular Army.

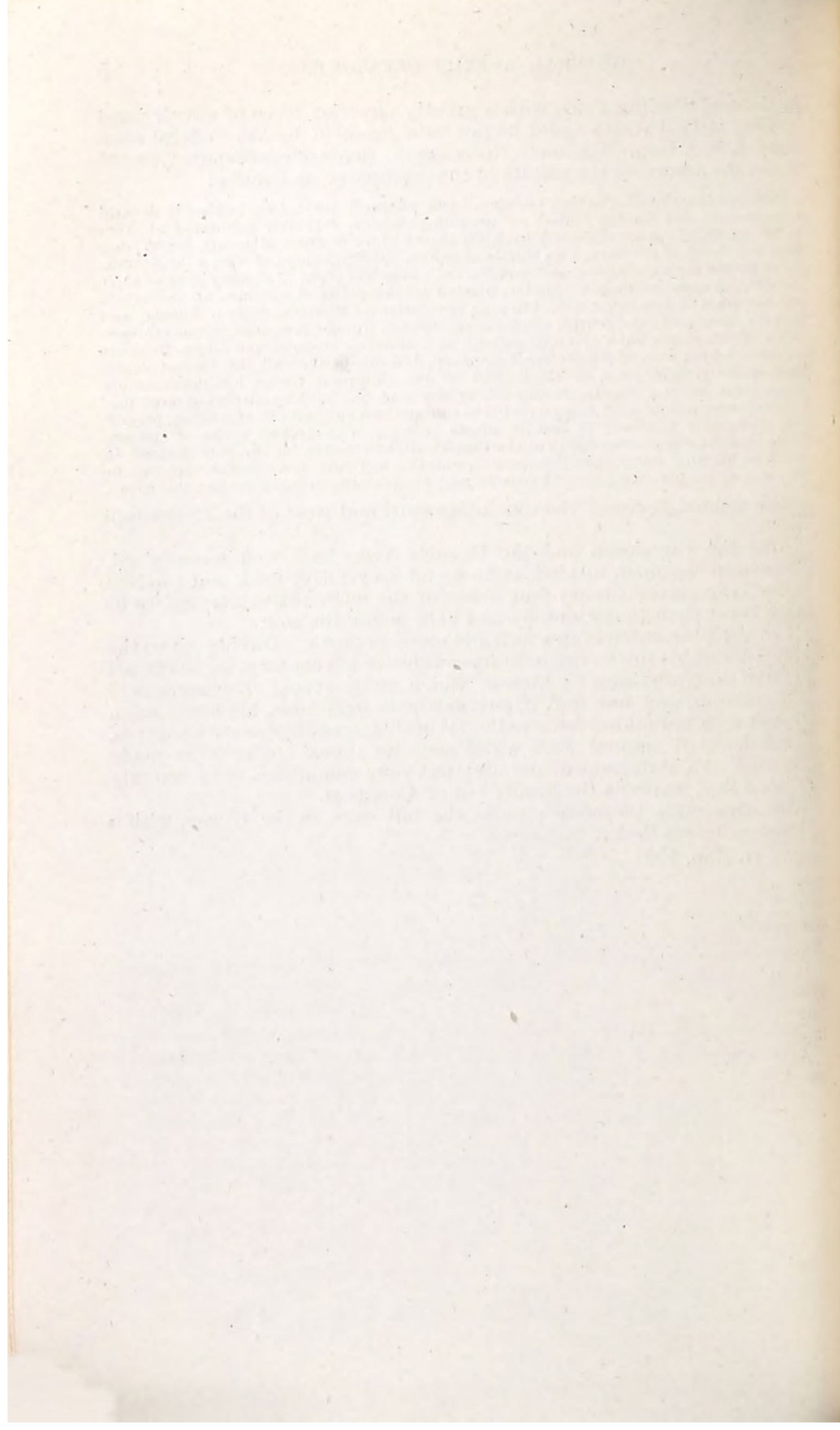
This campaign closed the war in Missouri and west of the Mississippi River.

After the war closed and the Regular Army had been reorganized, Pleasanton resigned, in 1868, as he found his relative rank and position in the Army, after twenty-four years of the most active service, to be much lower than that which he had held before the war.

General Pleasanton is now well advanced in years. Having given the best years of his life to the military service of his country, he has failed to make that provision for himself which he deserves. Having a military training, and but few, if any, business aptitudes, his application appeals with redoubled force to the favorable consideration of Congress. The delicacy of manner with which such an appeal ought to be made precludes the statement of details ; but your committee is thoroughly satisfied that he needs the kindly aid of Congress.

The committee therefore reports the bill back to the House, with a recommendation that it be passed.

H. Rep. 1704—2



JOHN C. FENSCKE.

JULY 24, 1882.—Ordered to be printed.

Mr. PETTIBONE, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3701.]

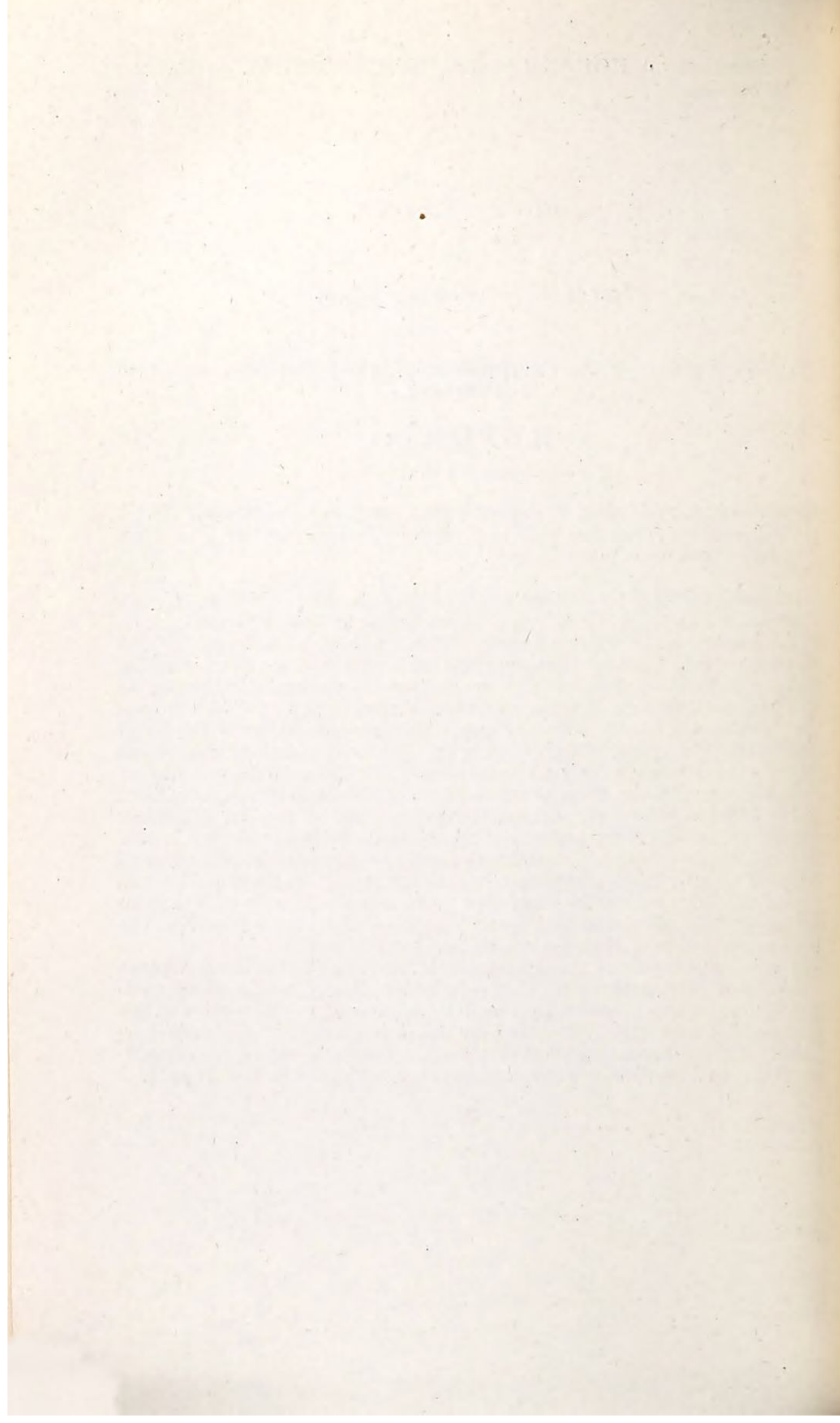
The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3701) granting a pension to John C. Fenske, having had the same under consideration, report as follows:

It appears from the evidence in this case that the petitioner, John C. Fenske, of New Ulm, Minn., was a wagon-maker at Lower Sioux Agency, in the employ of the United States, on the 18th day of August, 1862, at which time said agency was surprised and attacked by the Sioux Indians. It further appears that in assisting to defend the agency he received a severe wound from an Indian arrow, which passed through the muscles of his back, near the spinal column and between the third and fourth ribs, penetrating his left lung. He was treated for this wound by Dr. Alfred Miller, acting assistant surgeon at the military hospital at Fort Ridgeley, Minn., from the 20th of August to 30th September, 1862.

Dr. Miller in his sworn statement testifies that he treated petitioner in hospital aforesaid for arrow wound above described, and that it was received as above stated; that arrow-head remained in the wound until removed by him, dangerously injuring the lung; that frequently since the receipt of said injury affiant has seen petitioner frequently, and that he has never fully recovered and never can from the injury received, the lung remaining in a diseased condition.

It also appears from the statement of Gov. L. F. Hubbard, present governor of Minnesota, and other reputable citizens, neighbors of petitioner, that he was a robust and healthy man prior to the receipt of the injury and is now greatly disabled for the performance of manual labor.

After a careful consideration of this case your committee are of opinion that it is a meritorious one, and recommend that the bill do pass.



REGULATION OF EXPORTATION OF IMITATION BUTTER AND CHEESE.

JULY 26, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. HERR, from the Committee on Commerce, submitted the following

REPORT:

The Committee on Commerce, to whom was referred the bill (H. R. 4909) to regulate the exportation of articles in imitation of butter and cheese, would respectfully report:

That vast and constantly increasing quantities of imitation butter and cheese are being shipped from our ports to foreign countries. It is carried on the manifests and sold in foreign markets as pure products of the dairy. Under existing laws, the collectors of our ports have no power to require the shippers to describe the imitation article as such, so that accurate statistics of the amount of each exported cannot be compiled, and our customs laws afford no protection against fraud to the foreign consumer, and American butter and cheese are fast falling into disrepute.

As a consequence of the failure of our government to provide reasonable safeguards for the regulation of our foreign trade in these articles, hostile and prohibitory legislation against the whole American trade in butter and cheese is being agitated in the British Parliament.

The opinions of the collectors of the great ports of the Atlantic coast and the officers of the New York Produce Exchange and the Chief of the Bureau of Statistics have been submitted to your committee, and they recommend the additional legislation provided by this bill, with the following amendments, to wit:

Section 1, line 10, strike out the words "package of," and insert the words "case containing"; also, strike out from same section all after the word "article," in line 10, down to and including the word "by," in line 13, and substitute the following: "Oleomargarine butter" or "oleomargarine cheese," when either is made from oleomargarine; the words "lard butter" or "lard cheese," when either is made from a mixture of lard and dairy butter, or of a mixture of lard and milk or cream; and the words "vegetable oil butter," when it is made from a mixture of vegetable oils with dairy butter or oleomargarine.

Also, add after the word "affirmation," in section 1, line 16, the words "and on failure to file such manifest shall forfeit one hundred dollars for each offense."

Also, after the word "of," in section 2, line 1, strike out the words "butter, cheese, oleomargarine, and so forth," and insert "articles in the semblance of butter and cheese mentioned in the first section of this act."

2 REGULATION OF EXPORTATION OF IMITATION BUTTER, ETC.

Also, in section 3, line 3, after the word "vessel," insert the words "car or vehicle."

Same section, in line 7, after the word "custom-house," insert the words "at the seaboard or frontier port."

Also, strike out the whole of sections 4 and 5, and insert sections 4 and 5 attached thereto as substitutes therefor.

Also, strike out after "sec.," in line 1, section 5, the figure "6," and insert "5," and after the word "the," in same line, insert the word "special," and after the word in same line, strike out the words "dairy products" and insert the word "exports."

Your committee accordingly recommend that the bill, amended as hereinbefore indicated, do pass.

○

A. S. STREAM.

JULY 26, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

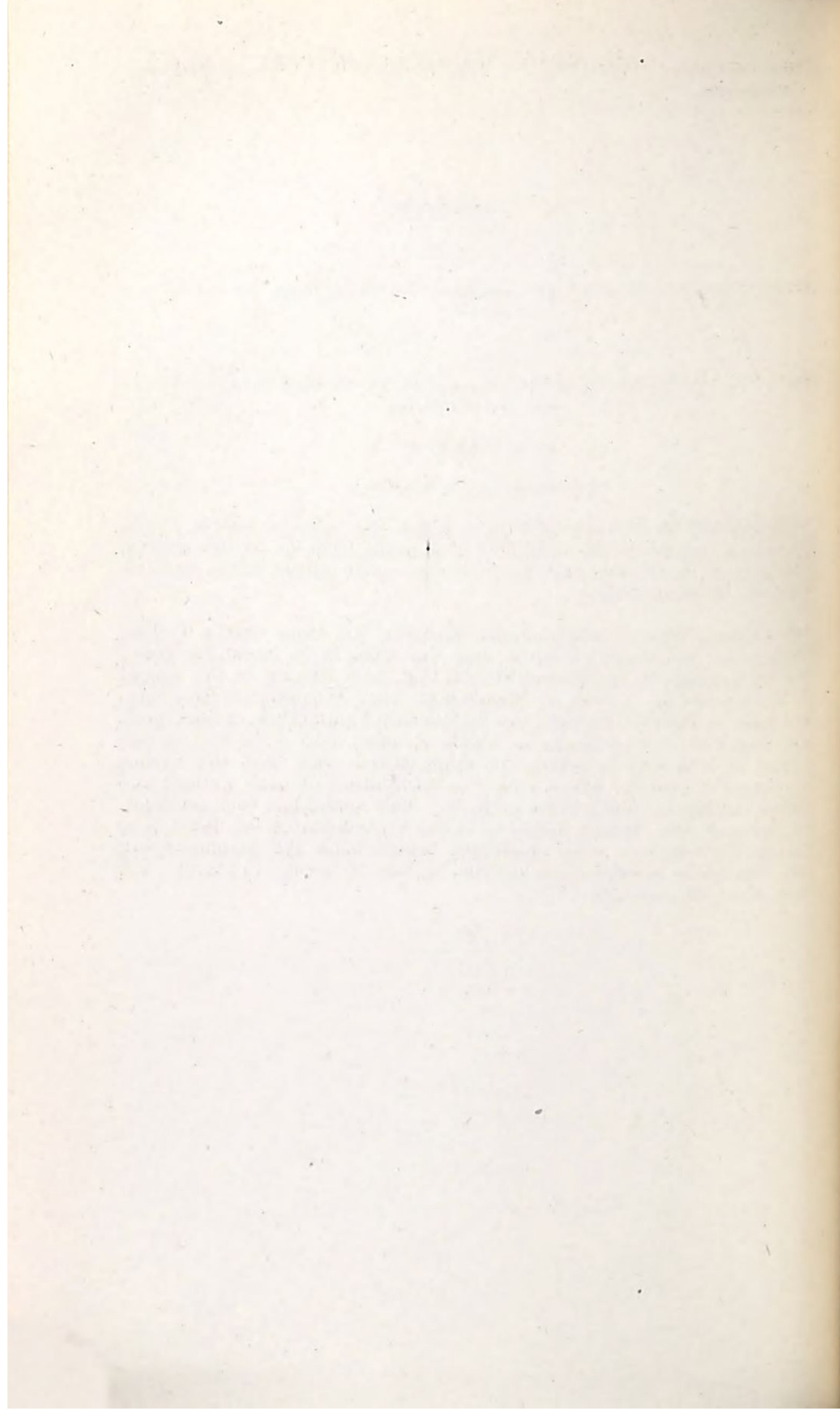
Mr. C. G. WILLIAMS, from the Committee on Foreign Affairs, submitted the following

REPORT:

[To accompany H. Res. 272.]

The Committee on Foreign Affairs, to whom was referred certain correspondence relative to the acceptance of a medal from the British Government by A. S. Stream, have had the same under consideration, and submit the following report :

It appears from correspondence between the Hon. Fred'k T. Frelinghuysen, Secretary of State, and the Hon. L. S. Sackville West, British minister to the United States, that A. S. Stream is the keeper of the life-saving station at Shoalwater Bay, Washington Territory, and that, on October 30, 1881, the British ship *Lammerlaw*, of Liverpool, was wrecked at that place, on which occasion said A. S. Stream performed such service in saving the shipwrecked crew that the British Government awarded him a medal in recognition of such gallant and efficient efforts in behalf of its subjects. This medal has been transmitted through the British minister to the United States for delivery to the said Stream, and your committee report back the accompanying joint resolution granting permission to him to accept the medal, and recommend its passage.



HENRY VIGNAUD.

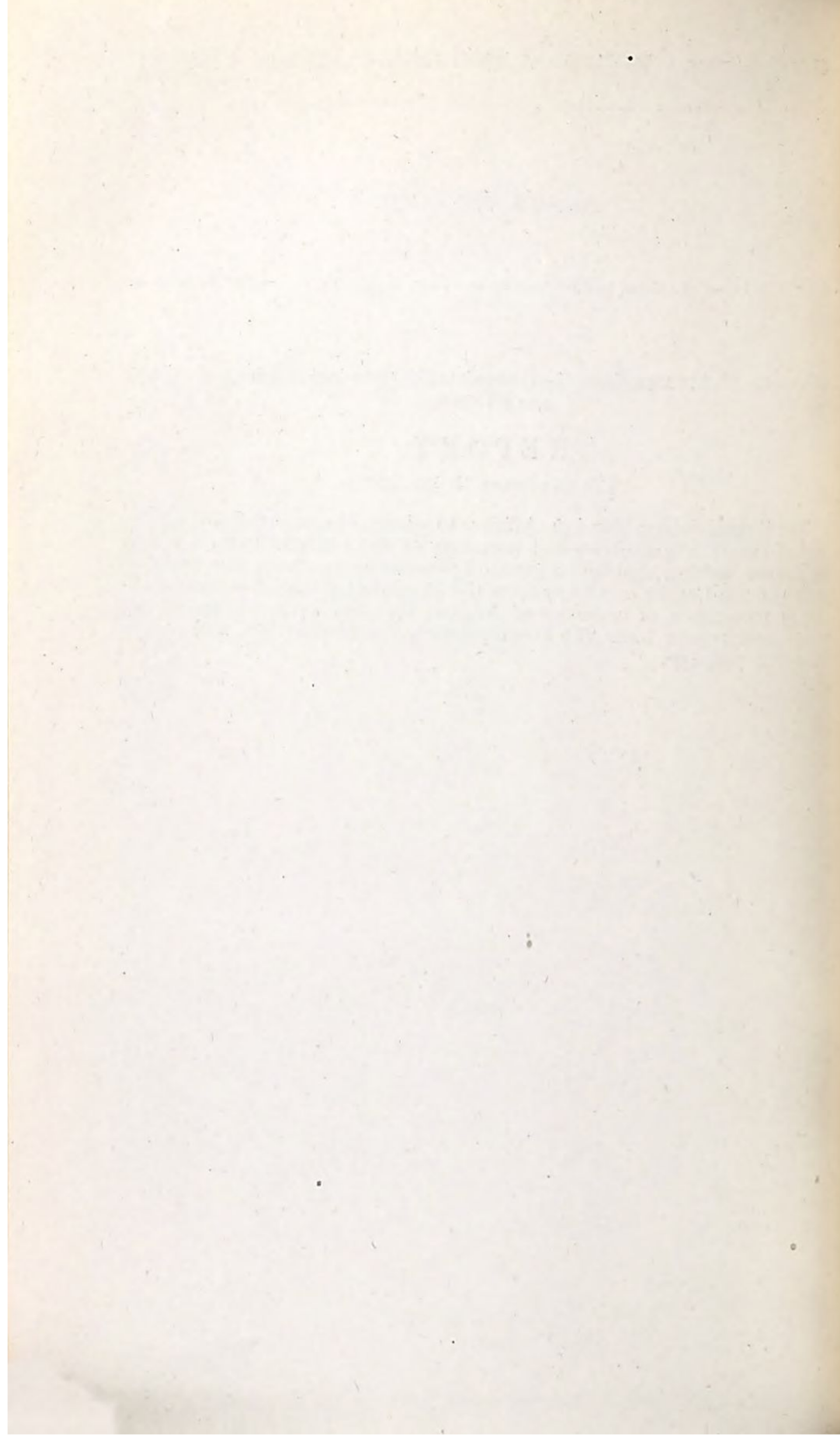
JULY 26, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. C. G. WILLIAMS, from the Committee on Foreign Affairs, submitted the following

REPORT:

[To accompany H. Res. 273.]

The Committee on Foreign Affairs, to whom was referred the memorial of Henry Vignaud, second secretary of the United States legation in France, asking that he be granted permission to accept the national order of the Legion of Honor from the President of the French Republic, in pursuance of a decree of August 10, 1881, have considered the same, and report back the accompanying joint resolution, and recommend its passage.



RIGHT OF WAY THROUGH THE ARSENAL GROUNDS AT BRIDESBURG, PA.

JULY 26, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

MR. GEORGE R. DAVIS, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 4388.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 4388) granting the right of way for railroad purposes through the United States arsenal grounds at Bridesburg, Pa., having considered the same, respectfully report:

This bill provides for granting a right of way, not exceeding 20 feet in width, through the grounds of the United States arsenal at Bridesburg, State of Pennsylvania, to the Bridesburg Manufacturing Company and Tacony Chemical Works, for the purpose of constructing a railroad to connect the Pennsylvania Railroad with the manufacturing establishments located at Bridesburg.

The location and regulations for operating the said railroad to be subject to the approval of the Secretary of War, the United States to have free of charge the right to use and occupy said railroad for purpose of transporting its goods, property, and supplies; and when right of way shall cease to be used for purposes named, shall revert to the United States. The right to repeal, alter, or amend the act is reserved to Congress.

The following letters have been received by the committee from the Secretary of War relating to this subject:

WAR DEPARTMENT,
Washington City, April 6, 1882.

SIR: I have the honor to acknowledge the receipt of your letter of the 22d ultimo, requesting information as to the propriety of passing House bill 4388, "Granting the right of way for railroad purposes through the United States arsenal grounds at Bridesburg, Pa., to connect the manufacturing establishments of Bridesburg with the Pennsylvania Railroad Company's line of railroad," and in reply I beg to invite your attention to the inclosed report of the Chief of Ordnance on the subject, whose views and recommendations are concurred in by me.

Very respectfully, your obedient servant,

ROBT T. LINCOLN,
Secretary of War.

Hon. GEORGE R. DAVIS,
Of Committee on Military Affairs, House of Representatives.

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, April 1, 1882.

SIR: I have the honor to return letter from Hon. G. R. Davis, of House Military Committee, inclosing bill H. R. 4388, "granting the right of way for railroad purposes

through the United States arsenal grounds, at Bridesburg, Pa., to connect the manufacturing establishments of Bridesburg with the Pennsylvania Railroad Company's line of railroad," and to invite attention to the inclosed copy of report from the commanding officer of the Frankford Arsenal. The only objections raised in this report which seem material to the case are—

1st. The granting of right of way for the benefit of private parties, this bill being in the interest of only two manufacturing companies named, as representatives of others.

2d. Direct connection with the Pennsylvania Railroad may be had by means of a two-mile track south connecting at Port Richmond, thus avoiding the arsenal altogether.

If it can be shown that granting this right of way is for the benefit of the people, and that no other route will meet the public wants, then, in my opinion, any inconvenience to the government interest should not weigh against the general welfare, and the right of way should be granted.

Should this bill be favorably considered, I respectfully recommend the following amendments: For lines 13, 14, 15, and 16, substitute as follows: "Regulations for operating said railroad shall be established by the Secretary of War prior to any entry on said grounds or the commencement of the construction of said work, with full power to make such changes in said regulations from time to time, as the wants of the public service may require."

Very respectfully, your obedient servant,

S. V. BENÉT,
Brigadier-General, Chief of Ordnance.

The Hon. SECRETARY OF WAR.

The following petition has been referred to the committee, signed by the representatives of fifteen manufacturing companies and firms of Bridesburg :

To the honorable Senate and House of Representatives of the United States :

The undersigned respectfully petition the favorable action of your honorable bodies in granting the Pennsylvania Railroad Company permission to traverse the grounds of the United States arsenal, situated at the mouth of Frankford Creek, on the Delaware River, and generally known as the Frankford Arsenal, at a point close by the river bank and where the grounds are not above two hundred feet in width, with a branch railroad or siding to connect the village of Bridesburg with said Pennsylvania Railroad Company's track, and to give the large manufactories located there and in the vicinity, as well as the Frankford Arsenal, a direct railroad connection. All of which is respectfully submitted.

It appears that the right of way contemplated is for the purpose of laying down a siding to connect the village of Bridesburg with the railroad, and afford to the manufacturing establishments of Bridesburg railroad connection and facilities. It is thought by your committee that such a right of way, 20 feet in width, to be located and railroad operations to be regulated by the Secretary of War, will not materially interfere with the arsenal, and that the arsenal may gain something by securing railroad connection.

Your committee report back the bill H. R. 4388, with recommendation that it be amended as follows:

1. In lines 9, 21, and 24 strike out the word "Pennsylvania" and insert the words "Philadelphia and Trenton."

2. Strike out lines 13, 14, 15, and line 16 to end of paragraph, and insert the following words: "Regulations for operating said railroad shall be established by the Secretary of War prior to any entry on said grounds or the commencement of the construction of said work, with full power to make such changes in said regulations from time to time, as the wants of the public service may require."

3. Amend the title of the bill by striking out the last two words and substituting therefor the words "Philadelphia and Trenton Railroad."

And that the bill as amended do pass.

EDWARD K. WINSHIP.

JULY 26, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. B. W. HARRIS, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany bill H. R. 93.]

The Committee on Naval Affairs, to whom was referred the bill H. R. 93, having considered the same, report it back to the House, with the recommendation that it do pass, and adopt the Senate report thereon, the bill having passed the Senate May 4, 1882. The Senate report is as follows:

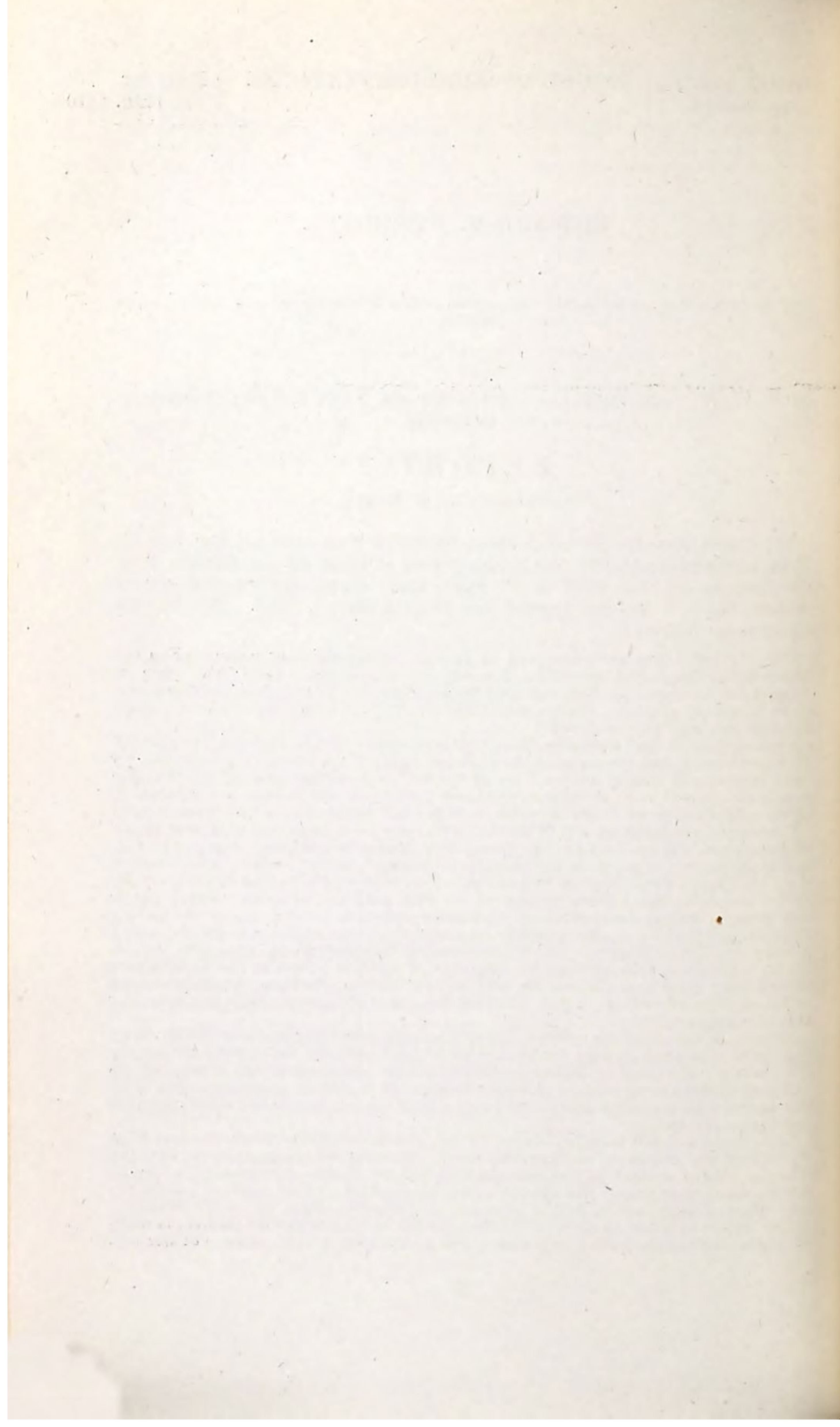
Edward K. Winship was appointed in 1862 an acting assistant paymaster in the United States Navy, and served in that capacity continuously until 1864, when he resigned and rendered his final accounts for settlement. Fourth Auditor Tabor says of Mr. Winship's accounts, under date of June 4, 1878: "Your accounts were always well kept and promptly rendered."

Years after their final rendition these accounts were audited, and when so audited checkages, errors, and discrepancies were found against him amounting to \$5,098, for which amount the United States have proceeded to judgment against Mr. Winship on his bond; and it is to be relieved from this judgment, and to have the accounting officers authorized to settle his accounts, that the bill referred to is before the Senate.

Your committee find that Mr. Winship, in the two years he served as acting assistant paymaster, was on duty on the supply-ship Massachusetts, and engaged in furnishing all manner of supplies, including large sums of money, to the various vessels of our blockading fleet; that he was compelled to pass over to the paymasters of the various vessels, in the hurried passage of his ship, packages of money amounting to large sums, as well as stores of every kind and description needed by our blockading squadron, and that his accommodations on board ship were inadequate for the duties he was compelled to perform. His disbursements, in money alone, amounted to near two million dollars, and, quoting the language of Auditor Tabor, in the letter above referred to, "Your expenditures on said ship, in money, clothing, small-stores, and provisions were exceedingly large, and that you were doing duty both as paymaster and as storekeeper."

Your committee are of the opinion that no adequate protection was afforded Mr. Winship against the great risk he was compelled to take, and that the chances are largely that loss was occasioned by money passing from him to some one else, in some of his numerous transactions, without proper voucher. It is sixteen years since Mr. Winship rendered his accounts, and in the judgment of the committee the relief asked for ought to be granted.

Your committee are largely induced to the above conclusion from the very high character of the gentleman seeking this relief. He resigned his position in the Navy to accept that of cashier of the Philadelphia United States sub-treasury, where he served considerable time. His accounts and his conduct in that position were faultless. We find from inquiry at the Treasury no suspicion attaches to Mr. Winship, and we believe it is fair to say that this loss, in the opinion of the committee, is without negligence or criminality on his part, and we recommend the passage of the bill.



PRE-EMPTION AND HOMESTEAD SETTLERS IN CALIFORNIA.

JULY 26, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. T. M. RICE, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 3559.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 3559) for the relief of certain pre-emption and homestead settlers in California, having had the same under consideration, report the same back to the House with the following amendments; and your committee recommend the adoption of such amendments, and that the bill, when so amended, do pass.

1. Amend by striking out the words from the preamble, "and the exterior boundaries of said Moquelamos rancho have been defined by an official survey made by direction of the Secretary of the Interior."

2. Amend by striking out from the fifth and sixth lines the words, "made in the year eighteen hundred and seventy-nine," and insert in lieu thereof the words "which has been or may hereafter be made."

The legislation proposed by this bill is made necessary for the following reasons:

In 1844 Pio Pico, then Mexican governor of California, made a grant of lands to Andreas Pico, which was afterwards known as the "Moquelamos grant." This grant was in these words:

1. He will be the owner in fee of eleven square leagues on the river Moquelamos, bordering upon the north upon the southern shore of said river; on the east upon the adjacent ridge of mountains; on the south upon the land of Mr. Gulnac; and on the west upon the estuaries of the shore * * *.

This claim of grant was presented to the board of land commissioners, appointed to adjust private land claims in California pursuant to the act of Congress of March 3, 1851. The claim was rejected by the commission, allowed on appeal in the district court, rejected on review in the circuit court for the district of California, and afterwards, on the 13th day of February, 1865, rejected by the Supreme Court of the United States for lack of evidence of the due execution and approval of the grant. (*Pico v. United States*, 2 Wall., 274.)

Pending the litigation upon this claim, and by acts of Congress approved July 1, 1862, and July 2, 1864 (12 Stat., 492 and 13 Stat., 356), a grant was made of lands in California to aid in the construction of the road, now known as the Central Pacific Railroad of California. This grant was in the following words:

SEC. 3. *And be it further enacted*, That there be, and is hereby, granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph

line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land, designated by odd numbers, to the amount of five (ten) alternate sections per mile on each side of said railroad, on the line thereof, and within the limits of ten (twenty) miles on each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached, at the time *the line of said road is definitely fixed.*

SEC. 7. * * * *Provided*, That within two years after the passage of this act said company shall designate *the general route of said road*, as near as may be, and shall file a map of the same in the Department of the Interior, whereupon the Secretary of the Interior shall cause the lands within *fifteen (twenty-five)* miles of said designated route or routes to be withdrawn from pre-emption, private entry, and sale; *and when any portion of said route shall be finally located*, the Secretary of the Interior shall cause the said lands *hereinbefore granted*, to be surveyed and set off as fast as may be necessary for the purposes herein named.

The act of July 2, 1864, enlarging and extending this grant (13 Stat., 358), contained the following clause:

And any lands granted by this act, or the act to which this is an amendment, shall not defeat or impair any pre-emption, homestead, swamp land, or other lawful claim, nor include any government reservation or mineral lands, or the improvements of any *bona fide* settler. * * *

It will be noted that the grant expressly excepted from its operation all lands "*sold, reserved, or otherwise disposed of.*"

The line of the railroad was definitely fixed in the year 1865, and the withdrawal of lands for the railroad was made January 31, 1865, and the lands in the Moquelamos rancho came within the limits of the railroad grant.

In 1870 the General Land Office issued patents for the lands with the Moquelamos grant to the railroad company.

That this grant was erroneously issued by the then Secretary of the Interior is manifest from the decision of the Supreme Court of the United States, which, in *Newhall v. Sanger* (2 Otto, p. 761, *et seq.*), decides that the lands in controversy at the time of the grant to the railroad, and included within the Moquelamos claim of grant, did not include or give the railroad corporation, grantee, any right to any part of the lands involved in the litigation upon Pico's claim.

The opinion and decision of the court proceeds upon its interpretation of these acts, and of the act of 1851 providing for adjustment of private land claims in California, that all lands in California which were claimed within two years after the act of 1851 as private lands should not, until the claim was adjudicated, be deemed a part of the public lands. Mr. Justice Davis, delivering the opinion of the court, says:

The status of lands included in a Spanish or Mexican claim pending before the tribunals charged with the duty of adjudicating it, must be determined by the condition of things which existed in California at the time it was ceded, and by our subsequent legislation. The rights of private property, so far from having been impaired by the change of sovereignty and jurisdiction, were fully secured by the law of nations, as well as by treaty stipulation. It had been the practice of Mexico to grant large tracts to individuals, sometimes as a reward for meritorious public services, but generally with a view to invite emigration and promote the settlement of her vacant territory. The country, although sparsely populated, was dotted over with land claims.

Exact information in regard to their extent and validity could hardly be obtained during the eager search for gold which prevailed soon after we acquired California. It was not until March 3, 1851, that our government created a commission to receive, examine, and determine them. As the operations of our land system, had it then been extended to California, would have produced the utmost confusion in titles to real estate within her limits, it was wisely withheld by Congress until such claims should be disposed of. The act of that date declared that all lands, the claims to which should not have been presented within two years therefrom, "should be deemed, held and considered to be a part of the public domain of the United States." *This was notice to all the world that lands in California were held in reserve to afford a reasonable time to the claimant, under an asserted Mexican or Spanish grant, to maintain his rights before the commission.*

He was not bound by its adverse decision, but was entitled to have it reviewed by the district court, with a right of ultimate appeal to the Supreme Court. If he, however, neglected to take timely and proper steps to obtain such review, the decision was thereby rendered final and conclusive. *The lands then fell into the category of public lands.* The same remark will apply to the judgment of the district court; but if he prosecuted his appeal to the tribunal of last resort, the *reserved lands retained their original character in all the successive stages of the causes, as they were regarded as forming a part of our national domain, only after the claim covering them had been "finally decided to be invalid."*

A failure, therefore, to present the claim within the required time, or a rejection of it, either by the commission or by the district court, without seeking to obtain a review of their respective decisions, or by this court, rendered it unnecessary to further reserve the claimed lands from settlement and appropriation. They then became public in the just meaning of that term, and were subject to the disposing powers of Congress.

It may be said that the whole of California was part of our domain, as we acquired it by treaty and exercised dominion over it. The obvious answer to all inferences from this acknowledged fact, so far as they relate to this case, is, that the title to so much of the soil as was vested in individual proprietorship did not pass to the United States. It took the remaining lands subject to all the equitable rights of private property therein which existed at the time of the transfer. Claims, whether grounded upon an inchoate or perfect title, were to be ascertained and adequately protected. This duty, enjoined by a sense of natural justice and treaty obligations, could only be discharged by prohibiting intrusion upon the claimed lands until an opportunity was afforded the parties in interest for a judicial hearing and determination. It was to be expected that unfounded and fraudulent claims would be presented for confirmation. There was, in the opinion of Congress, no mode of separating them from those which were valid without investigation by a competent tribunal; *and our legislation was so shaped that no title could be initiated under the laws of the United States to lands covered by a Spanish or Mexican claim until it was barred by lapse of time or rejected.*

This is, in our opinion, the true interpretation of the act of 1851. Until recently it governed the action of the Interior Department upon the advice of the law officers of the government (11 Op. Att'y-Gen., 493; 13 Id., 388), and was, at least by implication, sanctioned by this court in *Frisbie vs. Whitney* (9 Wall., 187). No subsequent legislation conflicts with it. On the contrary, the excepting words in the sixth section of the act of March 3, 1853, introducing the land system into California (10 Stats., 246), clearly denote that lands such as these, at the time of their renewal, were not considered by Congress as in a condition to be acquired by individuals or granted to corporations. This section expressly excludes from pre-emption and sale all lands claimed under any foreign grant or title.

It is said that this means "lawfully" claimed; but there is no authority to import a word into the statute in order to change its meaning. Congress did not prejudge any claim to be unlawful, but submitted them all for adjudication. Besides the act of March 3, 1853, which authorized the settlement and purchase of the lands released by the operation of the law of 1851, there was a general law (10 Stat., 244) passed on the same day, which conferred upon a settler on lands theretofore reserved on account of claims under foreign grants, there and thereafter declared by the Supreme Court to be invalid, the rights granted by the pre-emption law, after the lands should have been released from reservation—a class of lands which, from an early day, it had been the policy to reserve until the adjustment of all such lands (see act of 1811, 2 Stat., p. 664, 665, secs. 6, 10). This provision clearly implies that no right of pre-emption previously attached to lands of that description by reason of settlement and cultivation. (*Newhall vs. Sanger*, 2 Otto., p. 761, *et seq.*)

The court therefore held that the lands within the limits of the alleged Moquelamos grant were not granted to the railroad company by either of the acts of July 1, 1862, or July 2, 1864; and as they did not pass by those grants, there can be no pretense that the title to these lands has vested in the company by subsequent legislation, nor by relation upon the rejection of Pico's claim.

After this decision, declaring that the grant to the railroad company had not attached to the Moquelamos rancho, it being manifest that as the railroad company had no title, and Pico none, the title must be in the United States, and that the rancho fell within the category of public lands, the settlers, who seek relief through this bill, made actual and *bona fide* settlement on the rancho lands, and made their necessary applications and filings at the proper land office.

Their claims as pre-emptors and homesteaders brought the whole matter by reference before the Secretary of the Interior, who decided, on the 30th January, 1879, that the decision of the Supreme Court only avoided the patent to the railroad company as to the land involved in that litigation, and that the patent was not *void*, but *voidable*, as to the residue of the grant; and that until the patent to the railroad company was set aside by the judgment of a court *as to each and every tract*, the Interior Department could not exercise jurisdiction over the lands within the limits of the rancho; and that the entries of the settlers could not be allowed by the department until the patent, erroneously issued, had been first annulled by the proper legal tribunal.

Perhaps, under the decisions cited by Mr. Schurz in his ruling, patents inadvertently or fraudulently issued are so far *prima facie* valid as to tie the hands of the Land Department till set aside by a competent legal tribunal. But it would be monstrous to claim that a blundering or corrupt ministerial officer could, by inadvertence or willful malfeasance, issue a patent under an act granting lands, and include in it lands not embraced in the grant—in fact, the whole public domain—and thus arrest and hold in abeyance the settlement and sale of the public lands until a suit has been instituted, at the pleasure of some other official, to set aside such pretended patent and been leisurely prosecuted to judgment. Such a state of law would be intolerable. There is no possible theory by which this patent, held to be *void* as to the lands in the case of *Newhall v. Sanger*, can be held valid as to other lands within the boundaries of the Moquelamos rancho. And your committee are able to see no reason why Congress should be deprived of power by this fraudulent or erroneous patent to take action in the premises. The decision of the Supreme Court goes to the root of the matter, and demonstrates clearly that the railroad company never were granted a foot of land within the limits of the Moquelamos rancho. The patent is therefore a nullity. The Department of the Interior may be paralyzed by its own errors, and compelled to sit in helpless imbecility until a court shall have annulled its patents issued without authority and utterly void. Congress can therefore act upon the matter, disregarding the patent to the railroad company.

The error into which Mr. Schurz seems to have fallen is in determining the patent to the company to be not *void*, but *voidable*. Such is not the fundamental, rudimental principle of law. A patent issued by a ministerial officer in excess of his authority is void. It carries no title, vests no estate, creates no right, can be the foundation of no claim. (*United States v. Stone*, 2 Wall., 553; *Simmons v. Wagner*, 101 U. S., 260; *Stoddart v. Chambers*, 2 How., 316; *Reichert v. Felk*, 6 Wall., 160.)

If the view taken by Mr. Schurz be correct, and the patents to the railroad company, although erroneous and passing no title, are nevertheless conclusive on the part of the department as to every tract of land therein until expressly annulled by the court as to every tract, such a state of things furnishes the strongest reason why the power of Congress should be invoked.

At the time of the entries of these lands by the settlers they were public lands, in fact, subject to pre-emption and homestead entry, the title of the government not even shadowed by this phantom of a patent which the Supreme Court had decreed to be no patent. The settlers paid their money in good faith, have made their improvements, their titles should not be held in suspense even to await the idle formality of a judicial annulment of the patent as to each tract.

The bill under consideration authorizes these settlers, whose entries are disallowed, to make their entries and perfect their titles as of the date of their original entries and settlement on the lands.

In opposition to this bill, a petition addressed to Congress, has been presented by sundry persons claiming to be innocent purchasers from the railroad company under its void patent. They base their objections to the bill upon two points:

1st. That the final location of the railroad line, determining the limits of the grants to railroad companies, was not made till after the claim of Pico had been rejected.

2d. That the eastern limits of the grant claimed by Pico are not sufficiently defined or established by competent survey to the extent claimed by the settlers.

To the first of these objections it is sufficient answer to call attention to the decision of the Supreme Court above referred to. That decision plainly holds that the lands embraced in the grant, which would have been confirmed to Pico had he prevailed, were not granted to the railroad corporation. If not granted, but reserved by the acts of Congress, the date of final location was immaterial.

To the second objection it is a good answer to say that the call of the eastern boundary—the only one in dispute—was “the adjacent ridge of mountains.” These are fixed monuments, planted by the Almighty, and can easily be found to indicate the true line bounding the rancho.

The surveyor-general of California, without authority, caused a survey of this grant to be made some years ago. This survey cannot be claimed as fixing the boundaries of the grant; so Mr. Schurz very promptly held in 1879. In ordering a survey of this rancho, he said:

Prior to the final rejection of the grant by the Supreme Court, the surveyor-general of California improperly extended the public surveys over the lands within the claimed limits of the grant, and caused copies of the plats of survey to be filed in the local land office.

On September 21, 1864, the surveyor-general notified the local land office that the following-named townships were suspended “to await the final determination of the boundaries of the Rancho Moquelamos, now pending before the United States Supreme Court,” viz:

Township 2 north, ranges 5, 6, and 7 east.

Township 3 north, ranges 5, 6, and 7 east.

Township 4 north, range 6 east (part south of river).

Township 4 north, range 7 east (part south of river).

Township 4 north, range 5 east (part south of river).

There is nothing to show upon what data the surveyor-general based his action in reserving the above-mentioned townships, AND IT IS EVIDENT THAT THE TOWNSHIPS SUSPENDED DID NOT REPRESENT ALL OF THE LANDS WITHIN THE LAND-MARKS MENTIONED IN THE CONCESSION. The northern boundary was the Moquelamos River. This boundary is clearly defined, and is no doubt properly shown on plat transmitted to your office, by the register of the local land office at Stockton, on December 16, 1870.

The southern boundary was the lands of Mr. Gulnac. It appears from the record of your office, that in the year 1844 a grant of eleven leagues of land was made to G. Gulnac, by Governor Micheltoreno. This grant, which is known as Rancho Campo de las Franceses, which was confirmed by the United States district court on February 5, 1858; which decree subsequently became final on failure of the government to prosecute its appeal. Said grant was surveyed in 1858, and patented to Charles M. Weber on March 18, 1861. The northern boundary of this grant formed the southern boundary of the Moquelamos grant, and this boundary is therefore well defined, and, I think, properly described on the plat transmitted by the register as above stated. The western boundary was the *estuaries* of the shore. I think there can be no doubt that the “estuaries of the shore” referred to were the lands which were overflowed from the Sacramento and San Joaquin Rivers.

The official surveys show that all of the lands between the Sacramento and San Joaquin Rivers, and the west line of townships 3 north, range 5 east, 4 north, 5 east, and 5 north, 5 east, south of Moquelamos River, are notoriously swampy and overflowed, and wholly unfit for cultivation. All of the lands in township 2 north, range 5 east,

are of the same class. I am of opinion that a fair construction of the language of the grant would fix the western boundary of the Moquelamos Rancho at the line of segregation between the wet and dry lands. The call of the eastern boundary was the "adjacent ridge of mountains."

The plat transmitted by the register fixes this boundary upon the north and south line between townships 2 and 3 north, range 7 east, and 2 and 3 north, range 8 east.

On examination of the official surveys of townships 2 and 3 north, range 8 east, I am unable to find any description of mountains given which will answer the calls of the boundary. The nearest range of mountains on the east appears to be in township 3 north, range 9 east. This township is shown to contain 2,561.35 acres of unsurveyed mountains which are situated in the northeast corner thereof. Township 3 north, range 10, is shown to contain 7,087.82 acres of unsurveyed mountains which are situated in the northwest portion of the township, and form part of the chain of mountains lying in township 3 north, range 9 east.

The official survey was not made with reference to the calls of this grant, and it is therefore impossible to determine, from the general description contained in the field notes, whether the mountains here mentioned are the identical mountains called for in the grant, yet it would appear that such is the case. This point, if established, will fix the easterly boundary nearly two townships east of the line fixed on the plat constructed by the local officers in 1870.

With the official data before me, it is impossible to identify this boundary with certainty. This cannot be done unless a survey is made and the land-marks are clearly identified and connected with official surveys.

Inasmuch as the duty of instituting proceedings to set aside the patents improperly issued to the company will devolve upon the United States, and as the proofs necessary to sustain an action cannot be made without a satisfactory identification of the boundaries of this grant by actual survey, you are directed to cause a survey and plat of the grant to be made by the surveyor-general of California without unnecessary delay." (Copp's Land Owner, vol. 6, page 6.)

Thereupon a survey was executed in 1879, and the boundaries identified, and the lands claimed by these alleged purchasers from the railroad company are shown thereby to be within the limits of the grant.

In a letter of date January 26, 1882, the Commissioner of the General Land Office says, in relation to the survey and boundaries of this grant:

Upon the representation of a large number of settlers within the claimed limits of the said rancho, that the east boundary of the same, as surveyed and located in 1879, was not located sufficiently far to the east, the Secretary of the Interior, by letter of October 20, 1881, in pursuance thereof, and upon the recommendation of this office, directed that a disinterested and competent person be instructed to make a survey of the east line of the alleged grant—that being the only line in controversy—at as early a date as practicable, in order that the same might be produced, if required, on trial of the case for setting aside said patent, now pending in the United States circuit court for California.

By letter from this office dated November 2, 1881, a copy of the Secretary's letter was transmitted to the United States surveyor-general at San Francisco, with instructions to carry the same into effect. No report of the survey has yet been received from that officer.

The order for this new survey may necessitate a change in the language of the proposed bill as far as it relates to the survey made in 1879. I think that such a bill should be passed, and that the suits should be prosecuted.

In accordance with this suggestion of the Commissioner, the amendments proposed are submitted by your committee.

MARY E. MATTHEWS.

JULY 26, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. WADSWORTH, from the Committee on Invalid Pensions, submitted the following

R E P O R T:

[To accompany bill 2026.]

The Committee on Invalid Pensions, to whom was referred the bill (S. 2026) granting a pension to Mary E. Matthews, having had the same under consideration, report as follows:

The facts in this case are so clearly and fully set forth in the report of the Senate Committee on Pensions, that your committee adopt it as their own, with the recommendations named therein, as follows:

Mrs. Mary E. Matthews, the applicant, is the widow of Edward S. Matthews, surgeon in the United States Navy, with the rank of lieutenant-commander, who died August 16, 1881, at the Rhode Island Hospital in Providence, while being taken by his friends to the Butler Asylum for the Insane to be treated for insanity.

The evidence shows that he had exhibited insane tendencies and frequent periods of mental aberration for several years; that he had from time to time been confined in different asylums to be treated for mental derangements; and satisfactorily establishes the fact that he had long been a man of unsound mind. He had frequently attempted to take the life of his wife and other friends by violence, and committed many acts during the last years of his life plainly establishing the fact that he was irresponsible.

The immediate cause of his death was an overdose of morphine, administered by himself. It is quite apparent from the evidence that it was not taken with an idea of self-destruction, although he was incapable of caring for himself at the time. He was being transported by his friends from Martha's Vineyard to the Butler Hospital. Arriving at Providence and stopping at the City Hotel, with his father-in-law, he went to his room to retire for the night at about 5 o'clock p. m. Mr. Elliott (his father-in-law) then left him. After this, Surgeon Matthews left the room, went upon the street, and procured a bottle of morphine (or already had it upon his person), which drug he had been accustomed for many years to use as a remedy for chronic neuralgia, contracted in the service and line of duty. Shortly after he was seen by a policeman leaning against the fence, apparently ill. The policeman went to his aid, but Mr. Matthews immediately fell to the ground insensible. He was carried to the hospital, where he died the same night. A bottle of morphine was found upon his person, from which about ten grains had been taken, and the physicians certify that death was the result of an overdose of that poison.

Surgeon Matthews entered the service as assistant surgeon July 1, 1861, and he remained in the service till his death. He was the medical officer in charge of the *Hatteras* when she was sunk by the *Alabama* off Galveston in 1863. During the action he received an injury of the head from the concussion of a shell, from which he never recovered, suffering terribly from chronic neuralgia in the brain occasioned by it until his death. He was never known to have neuralgia before. During the last few years of his life all parts of his body were afflicted by these racking pains. He was exposed to incredible hardships while a prisoner in the *Alabama* and in the West Indies before he was paroled. He was on duty in the *San Jacinto* when that vessel was wrecked

off No Name Keys, and exposed on an uninhabited island, without shelter, with but little clothing, and very short of food, for some weeks. He was very dangerously sick there also. The captain of the vessel, who was exposed no more severely, became insane from his sufferings and subsequently died; and his widow is pensioned in consequence thereof.

In 1875 Surgeon Matthews, while in the line of duty at New Orleans, testing horses for the marine ambulance, was thrown from the carriage, and striking upon the head, received a permanent injury, from which he never recovered, and which intensified his sufferings in the brain and head while he did live.

He was an officer of remarkable ability and skill. His bravery in action, and his heroism in the presence of danger, and his conspicuous patriotism were worthy of the high commendation which they received from his commanding officers, to which the records of the department bear witness.

He left no estate, not enough to pay his funeral expenses. His widow has a house in this city, but it is mortgaged for all it can be sold for, if not for more. She has two children, a boy of sixteen and a girl of thirteen, both of weakly constitution, and no means to support them or herself.

We recommend the passage of the accompanying bill.

Statement of Mrs. Matthews.

I met Dr. E. S. Matthews, U. S. Navy, in November, 1864, just before he was ordered to the San Jacinto previous to her loss on No Name Keys. He appeared from my first acquaintance with him to be rather delicate, and complained before our marriage of the neuralgia. In December the San Jacinto was lost, and Dr. Matthews was exposed on an uninhabited island, with others, with no covering but canvas tents, to inclement weather, which aggravated his trouble, and he was sick for a long time, so that he could not write to me, and we knew nothing about the disaster until quite a long time after January, 1865. He obtained leave to come to Providence, and we were married on the 26th of February, 1865. From the very first he complained of neuralgia in his head and eyes, and suffered most intensely; he remained at home but fifteen days and then had his leave extended another fifteen days, when he returned to the East Gulf Blockading Squadron, and was stationed at Key West, under Dr. Gilchrist. There he had congestive chills and a slight attack of yellow fever, and was sent home on sick leave May 7, 1865. He came home in charge of a nurse, and was so feeble when he arrived at my father's house in Providence that he had to be assisted out of the carriage and up stairs, and I do not think he had good health after that; there was scarcely a day that he did not have to take some medicine to relieve himself from neuralgic pains; and since that time I think the habit which caused his death became fixed, though in my ignorance then of the real nature of the medicine, which I often gave to him myself at his request and by his direction, I did not know the danger he was in. Still I know that each day or so my dose was increased, until I finally asked the nature of the dose, and learning it was a preparation of opium (*morphiæ sulph.*), I became alarmed at the quantity and tried to prevent his using it altogether, but he only took a grain or two, and that allayed my fears, as I supposed he meant it was a very small quantity (I afterwards found out that an eighth of a grain was a large dose). He finally got better.

In July, 1865, he was ordered to the Pacific Squadron, and I joined him at Callao, Peru, in July, 1866. There he was attached to the *Fredonia*, and we lived on shore, No. 7 Calle Colon. He was, the next day after I arrived, taken with one of his terrible headaches, and called for his dose of morphine, which I gave him very reluctantly, and, as his trouble continued and seemed to affect his mind, I called in Dr. Rudenstein, United States Navy, and a shore doctor, whose name I have forgotten. Dr. Rudenstein prescribed morphine for him, and said to me that it was the result of malaria in his system, probably contracted in the Gulf Squadron, and through exposure without proper clothing after the wreck of the *Hatteras* and the wreck of the *San Jacinto*. The congestive chills he had there, Dr. Rudenstein said, had impaired his system and really caused the neuralgia. So I was obliged to submit to his taking the drug, with, however, the promise that he would leave it off the moment he could do so. On March, 14, 1867, he was ordered to the North Pacific Squadron, and I left Callao for the United States. In January, 1868, he was ordered home, and arrived 1st of February. I discovered then that he still had recourse to the morphine, and, though he tried to hide it from me, I discovered that he had been obliged to increase the dose very much, and from five to ten grains was a small quantity. He said he was obliged to do it in order to obtain the relief that a few grains had at first given him.

March 25, 1868, he was ordered to the *Michigan*, at Erie, Pa., and I, having read up a book upon the opium habit, commenced to try to cure him myself, and in my desire

to substitute a less evil for a greater, advised him to take chloroform (inhale it) in order to get relief from pain. Being on board ship during the day, I tried at night to press my cure upon him. The effect was terrible, for the chloroform finally made him a raving maniac, and so disturbed him, and he had such a craving for it that it was dangerous to be about in the house with him, and by applying to the captain of the ship, Jewett, for assistance, the doctor's state became known at the Navy Department, and the doctor was ordered before a retiring board for insanity. Getting him at last when free from the chloroform I told him his danger, and he left off trying to give up morphine and dropped the use of the chloroform. That quieted his mind at once, and he got over the danger which threatened him of being retired and sent to an insane asylum. He was detached November 5, 1868, and placed on waiting orders. From that time I considered the habit thoroughly formed, but never until his death did I give up the effort to have him cured. I paid the lawyer for defending him in the court of inquiry, which was the result of being ordered to the retiring board. During the following winter, up to the 8th of June, 1869, he went to a water-cure, where I joined him, and remained there by the advice of Fitz-Hugh Ludlow, trying to break off the habit—in vain, however, though his general health was much improved. While at the naval rendezvous, in 1869 and 1870, he still continued to use morphine, increasing the dose in spite of all my remonstrance, and, finally, while under waiting orders, he went to Dr. Day's asylum, then a little way outside of Boston, and I joined him, but, as before, his efforts were unsuccessful. He was then, January 25, 1871, ordered to the Ticonderoga. When in South America he still, in order to attend to his duties at all, continued to increase his dose of morphine, though he would occasionally make terrible efforts to overcome it, and fully realized the terrible hold the drug had upon him. He was very ill on the Ticonderoga while trying to leave it off, and his life was nearly despaired of for a time. Dr. Fassig attended him (he died out there), and Captain Badger took care of him himself. In February, 1874, he was detached, placed on waiting orders, and finally, thinking that a journey to Europe might enable him to overcome it, he applied for permission to leave the United States for six months. On his return the same hopeless condition continued, and we were ordered to Pensacola, Fla., through my efforts, hoping that a warm climate might help him, but in vain, and on May 28 he was detached and placed on waiting orders, and during that summer we went to all the sea-beaches, and tried everything to build up his health and make it possible to get along without his morphine. He went to the Mare Island hospital, but only remained a short time, being again detached and placed on waiting orders at his own request. Being in Washington, he was ordered to the Wyoming, but soon detached at his own request (and I believe nearly all these detachments were at his request), through my efforts, wishing to keep him under my own eyes, and if possible effect a cure. Through the effects of the drug, which could no longer be concealed, it having gained such a hold upon him, and his mind and brain giving way to the long strain upon them, he came near being court-martialed, but by stating the case *truthfully* to Secretary Thompson, and begging him to let him make one more trial, the reports were pigeonholed and he was turned over to me, and I sent him to the country away from all temptations and tried to get him straightened up. Through my intercession he was ordered to the Lackawanna on a long cruise, as I hoped a long sea voyage would take him away from all those things that had harmed him.

I will say here that in the effort to try to get along with less morphine he would think, as I told him, any substitute was better than so dangerous a drug; in fact I do not think anything that I heard of and recommended to him he ever neglected to try, from chloroform to chloral, liquors, belladonna, or anything that could be used as a substitute or antidote. He spent a small fortune in buying a medicine of a Dr. Collins, and took over five thousand dollars' worth of this antidote with him in the Lackawanna, but I do not think it was anything more than a disguised preparation of morphine, and hearing of the death of a lady after ineffectually trying to cure herself with it, I advised him to give it up, and on his return from the Lackawanna I advised him to go to Dr. J. L. Stephens, Lebanon, Ohio, to be cured. Dr. S. informed me that it was really impossible to cure him, his whole brain being so permanently impaired that he considered him a fit subject only for the insane asylum, and dangerous to be at large. He went to Dr. Stephens twice, and the last time Dr. Stephens told me he could not keep him and was obliged to let him go. He came east and went to my father's at the Vineyard, where he remained until the day before he died. Then my father thought it best to place him in the Butler Asylum for the Insane, and they both left Martha's Vineyard for Providence. My father left Dr. Matthews only a few minutes, when he went to consult some one about sending the doctor to the asylum, and during that time Dr. Matthews left the hotel, went out, and got a fresh dose of morphine. He had arrived at 60 grain doses three times a day, and this fresh bottle, from which he only took 10 grains, caused him to fall in a stupor in the street, and he was removed to the Rhode Island Hospital, where he died on the morning of the 16th of August, 1881, just at 25 minutes of 1 o'clock, a. m.

I think no one can read this terrible account and think that this habit was a pleasure

to Dr. Matthews, or was acquired without cause. The fact of his exposure, congestive chills, and his condition at the time of and after his marriage prove it, together with his whole life of efforts to overcome the terrible habit, and can but arouse the sympathies of the most hard-hearted. That no money was spared to help him in his efforts, the present condition that I find myself in, which, much against my will, makes it obligatory upon me to apply for a pension or relief, shows without any further statement. This has been a sad undertaking for me, and I hope it may at least prove a successful one.

MARY ELLIOTT MATTHEWS,
Widow of the late Surgeon Edw. S. Matthews, U. S. Navy.



KATE QUILLIGAN.

JULY 26, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. RAY, from the Committee on Invalid Pensions, submitted the following

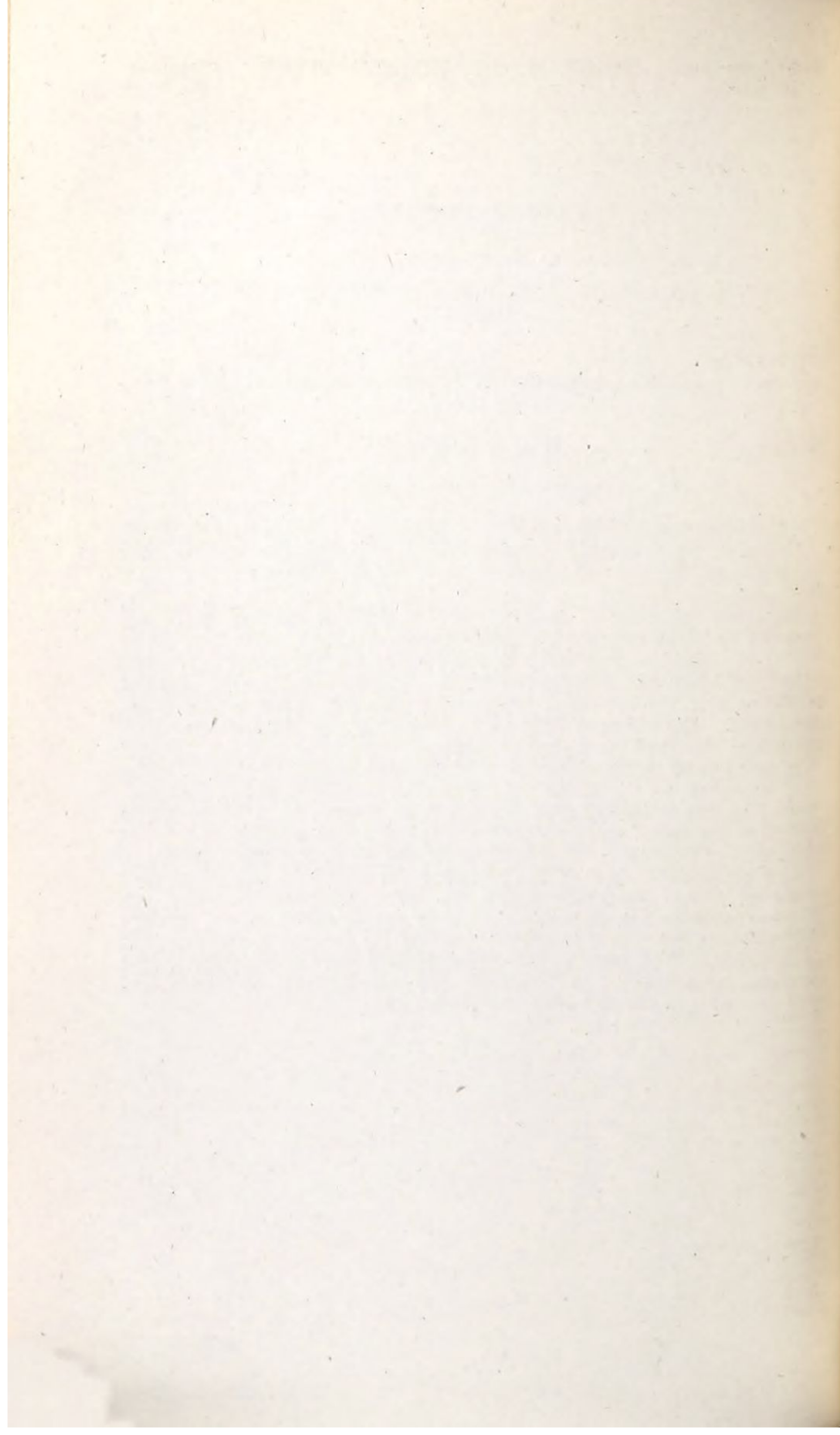
R E P O R T :

[To accompany bill H. R. 6833.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4060) granting a pension to Ellen Rowan, guardian, has had the same under consideration, and begs leave to submit the following report:

The relief asked for is in behalf of the child of Patrick Quilligan, who died at Camp Sheridan, Texas, October 14, 1866, while serving as private in Company B, Fourth Regiment United States Cavalry. The wife of said Quilligan also died about the time last mentioned. He left surviving him two children, a boy and a girl, the latter, named Kate, now living. The children were taken care of by the regiment to which the soldier belonged for a year or more, and upon the death of the boy Kate was placed in the National Soldiers' and Sailors' Orphans' Home, at Washington, D. C., where she remained, probably, during its existence. She was in receipt of a pension until August 18, 1879, when she arrived at the age of sixteen years, the age at which pension to a minor child must cease under the provisions of the general pension laws.

Kate Quilligan is demented, and, being left without means of support or friends able to assist her, is now dependent upon charity. Her condition of helplessness, although now of an age at which under ordinary circumstances she would be able to provide for herself, is equal to that of an infant. The case is one which should receive the speedy and favorable consideration of Congress, and therefore the committee submits a substitute bill and asks that it do pass.



CAROLINE R. FRENCH.

JULY 26, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. RAY, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill S. 2089.]

The Committee on Invalid Pensions, to which was referred the bill (H. R. 644) granting a pension to Mrs. Caroline R. French, has had the same under consideration, and begs leave to submit the following report:

The facts in the case are fully and correctly set forth in the report of the Committee on Pensions, United States Senate, which report your committee adopts as its own, and concurs in the recommendation therein contained.

The report is as follows:

Petitioner is widow of Col. William H. French, U. S. A., who died May 20, 1881, while on the retired list, of apoplexy. Her son, Frank S. French, who was a captain, died September 4, 1865, as she alleges, in consequence of exposure and sickness contracted in service and in the line of duty.

The petitioner asks for a pension of \$50 per month, because of the long and faithful service of her husband, the loss of her son, and her alleged necessitous circumstances. She has other children who support her, but whom she alleges have resources barely adequate for their own support.

Colonel French was a graduate of West Point; appointed second lieutenant of First Artillery July 1, 1837. He was promoted to be first lieutenant January 9, 1838; captain, September 22, 1848; major, Second Artillery, October 26, 1861; lieutenant-colonel, February 8, 1864; colonel, Fourth Artillery, July 2, 1877. He was made a brigadier-general of Volunteers October 24, 1861; major-general of Volunteers, February 1, 1863; mustered out of Volunteer service May 6, 1864; retired with the rank of colonel U. S. A. at his own request, being over sixty-two years of age, July 1, 1880. He served in 1837 and 1838 in the Florida war, in the Mexican war in 1847, against the Indians in 1852. At the breaking out of the war he was stationed at Fort Duncan, Texas, which post he evacuated February 20, 1861, marching his command 480 miles to Fort Brown, where he took transports, and arrived at Key West March 25, 1861 saving his battery by his prompt action. He was obliged to leave all his personal property behind at Fort Duncan, and the same alleged by the petitioner to be of the value of \$1,200. In the war of the rebellion he commanded a brigade in Sumner's division, Army of the Potomac, from December 1, 1861, to March, 1862; brigade, Second Corps, to September 12, 1862; third division, Second Corps, to June 24, 1863; in command at Harper's Ferry from June 27 to 29, 1863, and of troops guarding passes, roads, &c., to July 7, 1863, and in command of Third Corps, Army of Potomac, to March 26, 1864. His active service covered a period of forty-three years. He was a faithful, efficient, and brave officer.

In view of the long, faithful, and distinguished services of General French, the necessitous condition of the widow, and the probability, shown by evidence in the

case, that the predisposing cause of apoplexy, of which General French died, existed during his active service, the committee recommend the passage of the accompanying bill, giving the petitioner a pension of \$50 per month.

A similar bill having passed the Senate, the committee adopts Senate bill 2089 as a substitute, and asks that it do pass.

○

JOSEPH E. MOORE.

JUNE 26, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HILL, from the Committee on Claims, submitted the following

R E P O R T.

[To accompany bill H. R. 1042.]

The Committee on Claims, to whom was referred the bill (H. R. 1042) for relief of Joseph E. Moore, of Jersey City, N. J., having considered the claim and evidence presented, beg leave to report the following, with recommendation that the bill pass.

This bill appropriates \$8,856.25 in full for claimant's expenditure in completing the pier and boat-landing wharf for the light-house on Penfield Reef, in Long Island Sound, under the following circumstances:

On the 22d of June, 1871, Lieut. Col. I. C. Woodruff, engineer of the third light-house district, acting for and in behalf of the Government of the United States, after due advertisement for proposals, according to law, awarded to David L. Jones, of Jersey City, the contract to "furnish all the materials and do all the labor for the construction of the granite foundation and supporting pier, including a boat-landing, for the light-house at Penfield Reef, in Long Island Sound, according to the plans and specifications therefor, for the sum of \$23,175, under the direction of an agent of the government; the work to be completed in four months from the time of its commencement, and to be subject to the rigid inspection of the government agent, whose decision was to be final."

Other proposals were received for this work. The mean of all bids considered was the sum of \$36,207.50, and D. L. Jones, being the lowest bidder, a contract was made with him on the 22d June, 1871. (Appendix A.)

Supplemental to the contract, there was required by the government a guaranty for its proper execution. Accordingly, the claimant and one John Henry, of Milburn, N. J., executed their bond to the United States in the sum of five thousand dollars, jointly and severally, as guarantors for the contractor. (Appendix B.)

The contractor entered practically upon the execution of the work on the 20th of September following, and made such effort as he was capable of towards carrying it forward. But from his want of skill and experience, or through ignorance of the difficulties and requirements of the art of building on the sea-coast, under water, he failed to accomplish satisfactory results, and his contract was declared forfeited under the terms of the fourth paragraph thereof. (Appendix C.)

In accordance with the rule of the government, the guarantors were required, on the failure of the contractor, to make good their bond by paying the penalty, or to elect to execute the contract. The co-surety,

John Henry, had, in the interval, come to be insolvent, and the burden of the undertaking fell upon the claimant, under the direction of the Light House Board. (Appendix D.)

In the completion of the contract by the claimant his expenditures were larger than the appropriation of this bill. His time and personal labor were given to the work. His expenses for transportation, and that for subsistence, at the site of the work, are not reckoned in the bill. These may be considered incidental to the general responsibility of the undertaking. Moral fitness as well as the legal obligation of the transaction would seem to require that the sacrifices of the guarantors should bear some proportion to those of the government, in an enterprise involving profit and loss, awarded to an inexperienced contractor on their sole security. Upon this principle the claimant takes upon himself a portion of the loss. That the original contract was one not likely to be executed strictly by the most competent contractor is most probable from the evidence, and was therefore an improvident one for the government. It would seem to be most expedient for the government to give all the time necessary to execute the work, which was limited to *four months* in the contract, and was satisfactorily completed in *three years* by the claimant. If it was not competent to have executed the contract in the time limited by the government, that responsibility rests on the government, and the undertaking of the claimant was a new or implied contract rather than an obligation to execute the strict terms of the old one, for which he was the original guarantor.

The claimant's expenditures amounted to.....	\$34,201 25
From which is deducted the contract price paid.....	23,175 00
Leaving the actual cost over the amount received.....	11,026 25
From this sum the claimant deducts his personal expenses, the hire of a clerk in his private business for three years, &c.....	3,170 00
Leaving the sum appropriated in the bill.....	8,856 25

as the amount actually expended and claimed over and above the contract price.

This expenditure is established by the certificate of Lieutenant-Colonel Woodruff, the engineer in charge with whom the contract was made. (Appendix E.)

It is further verified by the special report of that officer to the Light-House Board, estimating the actual cost over the amount paid at \$11,589.57. (Appendix F.)

And, further, by the concurrent testimony of the finance committee of the Light-House Board, which examined the claim and estimated the expenditures over the amount of the bond on which the claimant was held to be liable at \$6,026.25. (Appendix G.)

The board further reported to the Secretary of the Treasury, who transmitted to the Forty-fourth Congress the evidence, that "the board had no power to afford relief in this case, but that it was respectfully suggested that the creditable course of Mr. Moore, in assuming the contract upon the failure of his principal, resulting in a loss to him of \$6,026.25 over and above the total amount of the bond, entitles him to consideration from the proper authorities." (Appendix H.)

The chairman, Professor Henry, stated that "had the claimant elected to abandon the contract, the sureties together would have been liable for but \$5,000, and while he has no legal claim for compensation, in addition to the amount stipulated in the contract, the board is of the opinion that he has an equitable claim, and that he is entitled to relief at the hands of Congress." (Appendix I.)

The evidence of the officers of the Light-House Board, under whose jurisdiction this contract was made, the work done, and the claim originated, leaves nothing indefinite as to the amount of the claimant's losses and the value of the services rendered. The question remaining is, ought the government, in equity, to reimburse the claimant by passing this bill? If it was apparent that the work could not be done (as it was not) for the sum of the contract price, and that of the guarantor's bond, had the government officers a right to substitute the claimant for the contractor instead of re-advertising the work?

The statute (Sec. 4666, p. 914) provides that "all works of construction, renovation, and repair (of light-houses, light vessels, beacons, buoys, and so forth) shall be made by the orders of the board, under the immediate superintendence of their engineer secretary, or of such engineer of the Army as may be detailed for that service." If the claimant "assumed the contract" by the orders of the Light-House Board, and performed the work under the immediate superintendence of their engineer, does it not create a new contract for the payment of the cost of the work? Is there any provision of law authorizing the Engineer Corps to declare a contract forfeited at four months, and to substitute a contractor for three years upon the same terms? The co-surety has not responded, nor has he been able to contribute. If this claim has equities that an original contractor would be denied, yet the statutes are thickly scattered with private acts for the relief of government contractors.

On the 16th April, 1870, \$12,198.35 was appropriated to R. P. Parrott for losses on the iron light-house at Cape Canaveral, Fla. (16 Stat., p. 633).

On the 19th February, 1871, \$60,000 were appropriated to James, Fowler, Kirkland, & Co., for losses as contractors on the dome of the Capitol at Washington (16 Stat., p. 681).

On the 3d March, 1873, \$20,000 were appropriated to F. A. Gibbons for losses as contractor on the agricultural building at Washington (17 Stat., p. 788); and later, on the 19th June, 1874, \$1,694.50 were appropriated to pay Bigler, Young & Co., as subcontractors for the light-house at Love Point, in Chesapeake Bay, a claim nearly identical with that under consideration. These are but few of the "modern instances" of relief granted contractors for the construction of public works. And all of these, and many others, were recommended by the Committees of Claims of both Houses of Congress. Without doubt, each presented peculiar hardships on the one hand and special merits on the other; so that it cannot be said that there is no rule why the government should not exact its hard bargains, and its contracts should not be enforced as strictly as between individuals. The rule is otherwise, if a line of precedents for fifty years shall be allowed to influence present legislation.

In the case of Bigler, Young & Co., the Senate committee unanimously reported as follows:

In view of the facts presented and the opinion of the officers of the Light-House Board, from which it is evident that the government would not only not have received until a late date the benefit of the light-houses, but would have incurred increased cost by having the work done by new contractors, we think it just and equitable to allow the amount named in the bill, which simply pays Messrs. Bigler, Young & Co. the amount of their actual expenditures, without any allowance for their time or personal expenses in completing the contract, and we recommend the passage of the bill.

These considerations are all represented in the present case, and, it may be said, in a larger degree in all respects.

APPENDIX A.

Articles of agreement, made and entered into between David L. Jones, of Jersey City, in the county of Hudson and State of New Jersey, of the first part, and Lieut. Col. I. C. Woodruff, Corps of engineers, engineer third light-house district, acting for and in behalf of the United States of America, of the second part, witnesseth:

That the party of the first part, in consideration of the matters hereinafter referred to and set out, and of the specification attached hereto, and forming part of this contract, covenant and agree to and with the party of the second part, furnish all the materials and do all the labor for the construction of the granite foundation and supporting tier, including a boat-landing, for the light-house at Penfield Reef, Long Island Sound, according to the plans and specifications therefor (which are to be considered a part of this contract). The work to be done under the direction of an agent of the United States, appointed by the party of the second part. The foundation and pier, including the boat-landing, delivered and accepted, for the sum of twenty-three thousand one hundred and seventy-five dollars (\$23,175.00), and to conform in every particular to the stipulations and conditions specified in this contract and to the specifications and plans mentioned, and which are to be considered as a part of this contract.

The party of the first part agrees to commence the construction of the foundation and pier as soon as the contract for riprap foundation-stone for this site, now in operation, is fulfilled, and to push the work to completion, when it shall be subjected to a rigid inspection by the party of the second part, or his agents appointed therefor, and that this inspection shall be final; it being understood that the work shall be completed in four months from the time of its commencement.

And the party of the second part covenants and agrees to pay the party of the first part for the work herein contracted for, at the price stipulated, in installments based upon estimates to be made by the party of the second part or his agent, as the work progresses, reserving from each payment 15 per cent. of the amount of the estimate, until the completion of the whole work, when the full amount due will be paid, including the reserved per centum.

Provided, however, that in case the party of the second part shall at any time be of the opinion that this contract is not duly complied with by the party of the first part, or that it is not in due progress of execution, or that the said party of the first part is irregular or negligent, in such case he, the said party of the second part, shall be authorized to declare this contract forfeited, and thereupon the same shall become null, and the party of the first part shall have no appeal from the opinion and decision aforesaid; and the right to except to or question the same in any place or under any circumstances whatever is hereby released by the party of the first part; but the party of the first part shall remain liable to the party of the second part for the damages occasioned to him by the said non-compliance, irregularity, or negligence.

And it is further stipulated and agreed, that no member of Congress shall be admitted to any share or part of this contract or agreement, or to any benefit to arise therefrom; and this contract shall be in all its parts subject to the terms and requisitions of an act of Congress passed on the twenty-first day of April, in the year of our Lord one thousand eight hundred and eight, entitled "An act concerning public contracts."

And this contract is also expressly understood to be subject to the terms and conditions of the joint resolution of Congress approved April 14, 1852, containing a proviso in the following terms, viz: "Provided nothing herein contained shall be so construed as to authorize any officer or agent of the United States to bind the United States by contract beyond the amount appropriated by Congress, or to sanction any such contract heretofore made."

And it is further understood and agreed, that no light-keeper, superintendent, or inspector of lights, engineer officer, nor any other person connected with or engaged in the Light-House Establishment Service, shall be allowed to contract for labor or materials, nor to be interested in this contract, nor to any benefit to arise therefrom.

Provided, also, that it is expressly understood and agreed, that this contract, or any part thereof, shall not be sublet nor assigned; but that it shall be well and truly carried out and fulfilled in good faith by the above-recited party of the first part, and that payment on account thereof shall be made to the aforesaid party of the first part, his heirs, executors, or administrators, or to such person or persons as he may lawfully authorize by power of attorney to receive the same.

And provided further, that this contract shall not be binding upon the United States until it shall have been approved.

And for the true and faithful performance of all and singular the covenants, articles, and agreements hereinbefore particularly set forth, the subscribers hereunto bind themselves, jointly and severally, their and each of their successors, heirs, executors, and administrators.

Thus covenanted, made and agreed by the parties, this 22d day of June, Anno Domini one thousand eight hundred and seventy-one, as witness their hands and seals.

DAVID L. JONES. [SEAL]

Signed, sealed, and delivered in presence of—

JOSEPH E. MOORE,
JOHN HENRY.

I. C. WOODRUFF, [SEAL.]
Lt. Col. of Engineers, Engineer 3rd L. H. Dist.

A. McCafferty,
JOHN R. VAN COTT.

APPENDIX B.

Bond.

Know all men by these presents, that Joseph E. Moore, of Jersey City, N. J., and John Henry, of Millburn, N. J., are held and firmly bound unto the United States of America in the full and just sum of five thousand (\$5,000) dollars lawful money of the United States, to be paid to the said United States, or its proper agent or attorney duly authorized to receive the same as liquated damages; to which payment well and truly to be made and done, we bind ourselves and every of us, our and every of our heirs, executors, and administrators, in the whole and for the whole, jointly and severally, firmly by these presents, sealed with the seals and dated this day of June, anno Domini one thousand eight hundred and seventy-one.

The condition of the above obligation is such that it the said David L. Jones, his heirs, executors, and administrators, do and shall well and truly execute the contract hereto annexed which he has entered into with I. C. Woodruff, engr. 3d dist., for and in behalf of the United States, by which he has contracted to construct the foundation and pier, including boat-landing, at Penfield Reef light-house, conforming in all respects to said contract, the same being hereto annexed, then the foregoing obligation to be void and of none effect; otherwise to remain in full force and virtue in law.

JOSEPH E. MOORE. [SEAL.]

JOHN HENRY. [SEAL.]

Signed, sealed, and delivered in presence of—

E. W. KINGSLAND, Jr.
FREDERICK SPENGEMAN.

I certify that I am acquainted with Joseph E. Moore and John Henry, the sureties named, and who executed the foregoing writing obligatory, and that they are residents of the State of New Jersey, and, in my opinion, sufficient surety for the purposes mentioned in the above bond.

GEORGE W. HOLDANE,
U. S. Asst. Assessor, 5th Dist., N. J.

APPENDIX C.

Letter from Mr. Charles B. Boyle, assistant superintendent of construction.

In reference to my views regarding the actual value of building the pier and landing wharf for Penfield Reef light-house, I may say that were I contracting for such a work I would hardly consider that \$35,000 would be sufficient to pay a fair compensation for the care, risk, and trouble required to carry the work successfully through.

Doing work at sea is very different from doing it on land. At sea men cannot work to advantage for want of room, and in the case of Penfield Reef they were compelled for a long time to work at low water, and therefore were often unable to work more than an hour or so every day, while in stormy weather they could not work at all, though boats, tenders, and men have all to be paid for full time. Again, wages must always be higher in such a case, because men are always exposed to difficulties, to weather, and to danger which do not occur upon land.

Mr. Jones, the contractor, reported to me on the 20th of September, 1871, at Penfield Reef light-station, on board the schooner Nash, then lying there ready to deliver a load of cut stone. From the conversation I then had with him I was so convinced of his want of capacity and ignorance of the nature of the work which he had undertaken that I at once wrote to the superintendent of construction that we might just as well abandon all hope of making any advance upon Penfield Reef light-house so long as Mr. Jones

had the contract, and I closed with the assertion that Mr. Jones had neither the knowledge nor energy necessary to complete the work, and that he never would do so.

When I talked to Mr. Jones at the time I refer to, he told me that he had forgotten to estimate upon the enrockment, but I am satisfied he never made any estimate whatever, and was incapable of doing so; otherwise he never would have taken the work at the price which he did, even without the enrockment; and with the many delays, mischances which are the necessary accompaniments of building at sea, a man of the most ordinary capacity would have seen that nothing but loss could occur; indeed, this was no secret to the engineers, for they all knew from the first that the work could not be done for the amount, even by the most skillful of builders.

Yours, truly,

CHAS. B. BOYLE,
Assistant Superintendent of Construction.

APPENDIX D.

STATE OF NEW JERSEY,
Hudson County, ss :

Joseph E. Moore, being duly sworn, says that he is a resident of Jersey City, State of New Jersey, and that in the year 1871 he became one of the bondsmen for David L. Jones, of Jersey City, in the penal sum of five thousand dollars, for the execution of a contract made by said Jones, with the United States Government, for the construction of a pier and boat-landing wharf, for the light-house on Penfield Reef, in Long Island Sound, and that one John Henry, of Millburn, State of New Jersey, was a bondsman with this deponent for the said Jones. Deponent further says that he was informed and verily believed at the time he became surety for the said David L. Jones, that he, said Jones, and also deponent's co-surety, John Henry, were men of means and responsibility, and abundantly able to perform the requirements entered into by them in said contract, but deponent afterwards found that neither the said David L. Jones or John Henry were possessed of any property, and both of them were utterly irresponsible. Deponent further says that after the said Jones had abandoned the contract, and this deponent had performed the same to the satisfaction of the government, and at a great loss to himself, that before making a petition to the government for relief he used every lawful endeavor to obtain remuneration for his losses from the said Jones and Henry, but was and has been up to the present time unable to obtain any redress from either the said David L. Jones or John Henry.

JOSEPH E. MOORE.

Subscribed and sworn to before me this 23th day of December, 1877.

[SEAL.]

H. W. LEONARD,
Notary Public, N. J.

STATE OF NEW JERSEY,
Hudson County, ss :

Henry W. Leonard, of Jersey City, State of New Jersey, who, being duly sworn according to law, deposeth and saith: That he is in the law claim and collection business, and that his office has been and is at present in said city; that in the years 1872-'73 he had certain claims placed in his hands for collection against one John Henry, of Millburn, New Jersey; among said claims one in favor of Joseph E. Moore, of Jersey City, and that in the prosecution of the said claims deponent found the said John Henry insolvent, and was unable to satisfy any of the said claims whatsoever on that account, and deponent further found that he had been insolvent for two or three years previous, and is at the present time insolvent; deponent further certifies that he has no interest in the prosecution of the claims of the said Joseph E. Moore now pending before Congress.

H. W. LEONARD.

Sworn and subscribed to before me this 31st day of December, A. D. 1877.

[SEAL.]

J. D. MANNING,
Notary Public, New Jersey.

APPENDIX E.

TOMPKINSVILLE, N. Y., *February 4, 1875.*

The proposals for the pier and landing-wharf of Penfield Reef extended from that of D. L. Jones, the lowest—\$23,175—to that of Bishop & Bishop, the highest—\$49,440—excluding two informal bids.

The mean would be	\$36,207 50
The actual expenditure for the pier and wharf, as per Mr. Moore's affidavit.	34,201 25

Difference	2,006 25
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That is, the petitioner's expenditure on the work is less than the mean of the proposals by \$2,006.25.

The work could not have been executed by the government for a less amount than was incurred by Mr. Moore, and the benefit of this fact should be given the petitioner.

The work has been executed in the most satisfactory manner in every respect, and it has withstood the violence of the seas during two seasons.

The claim, in my opinion, is equitable, and I have no hesitation in recommending relief for which the petition calls in the amount of \$11,026.25.

I. C. WOODRUFF,

Colonel of Engineers, Engineer Third Light-House District.

APPENDIX F.

OFFICE OF THE LIGHT-HOUSE ENGINEER, THIRD DISTRICT,
Tompkinsville, N. Y., October 18, 1875.

SIR: Complying with the instructions contained in the Board's letter of the 6th March, and repeated in letter of 7th ultimo, in connection with the claim of Joseph E. Moore, esq., who constructed the pier and enrockment for the Penfield Reef light-house, Long Island Sound, I have the honor to inclose herewith a detailed estimate of what it would have cost to build the said pier and enrockment, based upon the prices of materials and facilities for carrying on work at the time this structure was erected.

The current work of the office has engaged the time of assistants, preventing an earlier preparation of the estimate. The estimate has been prepared by one of the most competent and experienced assistants, under my direction, and the allowances for contingencies in loss of time, &c., are stated at the minimum rather than the maximum amount, judging from experience had upon several works in the district.

The cost of pier and enrockment, per detailed estimate, is.....	\$34,764 57
The amount paid to Mr. Moore under the contract was.....	23,175 00

The difference is.....	11,589 57
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Very respectfully, your obedient servant,

I. C. WOODRUFF,

Engineer Third Light-House District.

Prof. JOSEPH HENRY, LL. D.,

Chairman Light-House Board, Washington, D. C.

APPENDIX G.

WASHINGTON, D. C., *December 6, 1875.*

SIR: The committee on finance, to which was referred the claim of Joseph E. Moore for compensation in addition to what has been paid him for constructing a pier and boat-landing, &c., at Penfield Reef, Long Island Sound, submit the following report, viz:

A history of the case was presented in a letter from the chairman of the Light-House Board to the honorable the Secretary of the Treasury, dated February 27, 1875, a copy of which is hereto appended. The further investigation referred to in that letter has been made, the result showing that without doubt the claimant has lost the amount named in his claim.

Upon examining the abstract of bids opened June 9, 1871, it is found that the lowest bid was that of David L. Jones, \$23,175; next, James Ford, \$23,230; next, D. V. Howell, \$25,700; next, Bishop & Bishop, \$49,440.

Whether either Ford or Howell could have done the work for the amount named in their respective bids the committee has no means of determining; but from the report of General Woodruff, the engineer of the third district, it is seen that if the government had done the work by day's work, and purchased in open market, it would have cost \$34,764.57. The Board has no power to afford relief in the case; but the creditable course of Mr. Moore, one of the sureties, in assuming the contract upon the failure of his principal, resulting in a loss to him of \$6,026.25 over and above the total amount of the bond, entitles him to consideration from the proper authority.

The papers in the case are herewith returned.

Very respectfully,

O. M. POE,
Chairman of the Committee on Finance.

The CHAIRMAN OF THE LIGHT-HOUSE BOARD.

APPENDIX H.

TREASURY DEPARTMENT,
OFFICE OF THE LIGHT-HOUSE BOARD,
Washington, December 18, 1875.

SIR: Herewith inclosed I have the honor to transmit copies of the papers relative to the claim of Joseph E. Moore, for losses sustained by him in building the pier and landing-wharf at Penfield Reef, Long Island Sound, under the contract awarded on June 22, 1871, to David L. Jones.

On February 27 last, the Light-House Board acknowledged the receipt of the papers of which the inclosed are copies, and made a preliminary report on the matters therein contained, a copy of which report is also herewith transmitted.

The careful investigation of all the facts in the case referred to in that report, as being necessary in order to determine the actual or approximate losses sustained by Mr. Moore in carrying out the contract of Mr. Jones, has been made, from which it appears that the claimant has lost the amount named in his claim.

Upon examining the abstract of the bids for the work in question, opened June 9, 1871, it is found that the lowest bid was that of David L. Jones, \$23,175; next, James Ford, \$23,230; next, D. V. Howell, \$25,700; next, Bishop & Bishop, \$49,440.

Whether either Ford or Howell could have done the work for the amount named in their respective bids, the Board has no means of determining; but from the facts developed in this investigation, it is certain that if the government had done the work by day's labor, and purchased in open market, it would have cost \$34,764.57 therefor.

The Light-House Board has no power to afford relief in the case, but it is respectfully suggested that the creditable course of Mr. Moore, who was one of the sureties, in assuming the contract upon the failure of his principal, resulting in a loss to him of \$6,026.25 over and above the total amount of bond, entitles him to consideration from the proper authorities.

Very respectfully,

PETER C. HAINS,
Engineer Secretary, Major of Engineers, U. S. A.

The Hon. SECRETARY OF THE TREASURY.

APPENDIX I.

TREASURY DEPARTMENT,
OFFICE OF THE LIGHT-HOUSE BOARD,
Washington, February 27, 1875.

SIR: I have the honor to acknowledge the receipt of the papers relating to the claim of Joseph E. Moore, for an alleged loss of \$11,026.25, sustained by him in carrying out the contract made by David L. Jones, June 22, 1871, for constructing the foundation and supporting pier of the Penfield Reef, Long Island Sound, light-house, referred to this office by you for report, at the request of Hon. S. W. Kellogg, M. C.

In reply, I beg leave to say that the contractor gave a bond with two sureties in the sum of \$5,000 for the faithful performance of his contract, and that the claimant, Mr. Joseph E. Moore, was one of the sureties, and that the contract was faithfully carried out and the work done to the entire satisfaction of the Board, by Mr. Moore, as stated by him.

It is impossible, however, without a careful investigation of all the facts in the case,

to determine the actual or even the approximate loss sustained by Mr. Moore in carrying out the contract of Mr. Jones; but it is believed by the Board, from the character of the work done, as well as from the papers under consideration, that the cost of the work was largely in excess of the amount paid by the government therefor.

Had Mr. Moore elected to abandon the contract, the sureties together would have been liable for but \$5,000; and while Mr. Moore has no legal claim for compensation in addition to the amount stipulated in the contract, the Board is of the opinion that he has an equitable claim, and that he is entitled to relief at the hands of Congress.

To determine the amount that he is entitled to requires data which the Board is not now in possession of. It requires a minute and extended investigation, involving an examination of the cost of materials and labor at the period when the work was done; and to make this investigation will take an amount of time which will render it impracticable to prepare a report previous to the adjournment of the present session of Congress.

The papers in the case are retained for the purpose of making the necessary investigation, upon the completion of which the report called for will be forwarded.

Very respectfully,

JOSEPH HENRY, *Chairman.*

Hon. B. H. BRISTOW,
Secretary of the Treasury.

H. Rep. 1715—2

REBECCA BURDSALL.

JULY 26, 1882.—Laid on the table and ordered to be printed.

Mr. HILL, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 4024.]

The Committee on Claims, to whom was referred bill H. R. 4024, have had the same **under** consideration, and report it back with a recommendation that it **do not** pass.

○

CHARLES L. DAHLER.

JULY 26, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. RAY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1918.]

The Committee on Claims, to whom was referred the bill (H. R. 1918) for the relief of Charles L. Dahler, submit the following report:

This claim is for the amount of the following draft:

No. 328.]

VIRGINIA CITY, M. T., January 30, 1867.

Assistant Treasurer of the United States, New York, pay to A. H. Barrett, or order, the sum of one thousand and eighty-five dollars.

\$1085

THOMAS FRANCIS MEAGHER,
Secretary Montana Territory.

(Indorsed:) Pay order Hussey, Dahler & Co.

A. H. BARRETT.

The circumstances are fully detailed in the affidavit of Mr. Barrett, annexed hereto, and marked Appendix A.

It appears that this claim was considered by the Claims Committee of the Forty-fifth Congress, and a report thereon was made by Mr. Ellsworth from said committee, which is as follows:

The Committee of Claims, to whom was referred the bill (H. R. 798) for the relief of Charles L. Dahler, have had the same under consideration, and report as follows:

Thomas Francis Meagher was secretary of the Territory of Montana during the years of 1866 and 1867, and one A. H. Barrett was employed to copy the laws and journals, and to index the same, passed at the third session of the legislative assembly of said Territory, and that for said services he was to receive the sum of \$1,700 in currency; and that it was stipulated between the said Meagher and the said Barrett that the work was to be completed in sixty days from the date of said agreement; and that in order to complete the work within the time specified, the said Barrett was compelled to employ assistance; and to pay the persons so employed, he was compelled to borrow money, gold dust and coin, at that time the only recognized circulating medium in the Territory, and that for the gold dust and coin he had to pay interest at 3 per cent. per month. That in the early part of March, 1867, he had a settlement with the said Meagher, and gave the said Meagher a voucher receipted in full for the sum of \$1,700, and received in part payment of said voucher a draft drawn by said Meagher on assistant treasurer United States at New York for \$1,085, and the said draft was sent forward through Hussey, Dahler & Co., bankers, for collection, and that on presentation to the assistant treasurer at New York payment was refused, as the said Barrett was informed, for the want of funds to Meagher's credit, and that said draft is still unpaid, and that the sum of \$1,085 is all yet unpaid. That the service performed by him under contract with said secretary was service that was required to be performed by the secretary, but at the time this work had to be done the governor was absent from the Territory, and the said secretary was acting governor of the Territory, and so employed in his duties as such acting governor in suppressing Indian hostilities then existing in

the Territory as to be unable to perform said copying and indexing, and under the circumstances it was utterly impossible for the secretary to do the work performed by said Barrett.

It is also shown that the claimant is now the lawful owner of said claim, and that in the opinion of your committee the claim is a just one and should be paid.

We find the facts stated in the foregoing report made by Mr. Ellsworth to be true and correct in substance.

Your committee also append hereto the letter of Hon. Martin Maginnis, Delegate from the Territory of Montana, dated April 21, 1882, marked Appendix B, showing that the sum of \$1,700, being the amount charged for the labor done (in part payment of which the above draft was drawn), was a fair and just compensation or allowance for the work at the time and place it was performed.

Your committee therefore make a favorable report, and recommend the passage of said bill.

APPENDIX A.

TERRITORY OF MONTANA,
County of Jefferson, ss.

Personally appeared before me, Frank Wells, county clerk and recorder for the county of Jefferson, Territory of Montana, A. H. Barrett, who having been duly sworn deposes and saith that he was employed by Thomas Francis Meagher, secretary of the Territory of Montana, to copy the laws and journals (and to index the same) passed at the third session of the legislative assembly of the aforesaid Territory, and that for said service he was to receive the sum of one thousand seven hundred dollars in currency; and it was stipulated between the said Meagher and the deponent that the work was to be completed in sixty days from the date of said agreement, and that in order to complete the work within the time specified the deponent was compelled to employ assistance, and to pay the persons so employed he was compelled to borrow money, gold dust and coin at that time being the only recognized circulating medium in the Territory, and that for the gold dust and coin borrowed to pay said persons he was compelled to pay interest at the rate of three per cent. per month; and the deponent further saith that in the early part of March, 1867, he had a settlement with the said Meagher, and gave the said Meagher a voucher receipted in full for the sum of seventeen hundred dollars, and received in part payment of said voucher a draft drawn by said Meagher on assistant treasurer U. S. at New York for one thousand and eighty-five dollars, and that said draft was sent forward through Hussey, Dahler & Co., bankers, for collection, and that on presentation to the assistant treasurer at New York payment was refused, as this deponent was informed, for want of funds to Meagher's credit; and furthermore that said draft is still unpaid, and that the sum of one thousand and eighty-five dollars is justly due him.

The deponent would further state that at the time he was employed by Secretary Meagher to do this work, that, owing to the absence of the governor from the Territory, that the secretary of the Territory was acting governor, and was actively engaged in suppressing the Indian hostilities then existing within Montana Territory, and that it would have been utterly impossible for the secretary himself to have performed said service.

A. H. BARRETT.

Sworn to and subscribed before me this 3d day of February, A. D. 1871.

[SEAL.]

FRANK WELLS,
County Clerk.

EXHIBIT B.

HOUSE OF REPRESENTATIVES,
Washington, D. C., April 21, 1882.

SIR: In answer to your personal question as to whether the amount paid by the governor of Montana for indexing certain laws and journals for which certain drafts were issued, now pending before your committee for payment; from my knowledge of the cost of labor and of living in the Territory of Montana at the time said work was done, I would unhesitatingly state that, in my judgment, the compensation allowed was fair and just, and the work could not have been done for less in Montana Territory at that time.

I understand that the accounting officers of the Treasury made no objection to the amount.

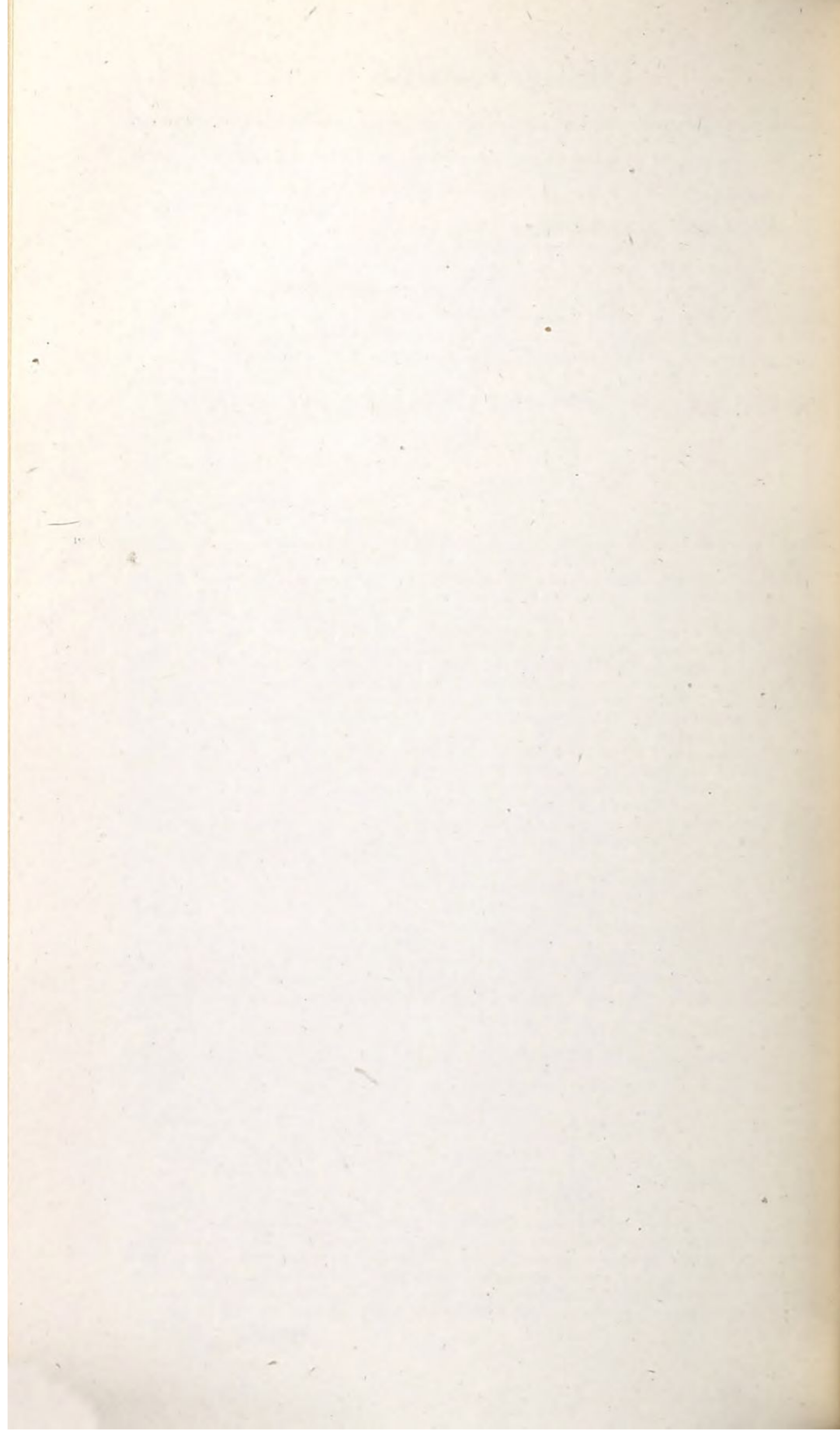
The draft is now held by innocent purchasers, and the bill for their relief should be passed.

Respectfully,

MARTIN MAGINNIS.

Hon. OSSIAN RAY,
House of Representatives.

O



FREDERICK W. RUGGLES.

JULY 26, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. RAY, from the Committee on Claims, submitted the following

R E P O R T :

[To accompany bill H. R. 606.]

The Committee on Claims, to whom was referred the bill (H. R. 606) for the relief of Frederick W. Ruggles, having considered the case and the evidence presented, beg leave to report:

This claim has already been considered by the Senate Committee on Claims, and has been favorably reported by Senator Frye from that committee. His report presents a full, fair, and correct statement of the claimant's case, and your committee adopt the same as their own. It is as follows:

The claim of Frederick W. Ruggles against the United States, which he desires to be heard and adjudicated upon in the Court of Claims, is based upon the following facts:

The said claimant, Frederick W. Ruggles, is a subject of the British Government, residing at Westport, in the county of Digby, Province of Nova Scotia, and Dominion of Canada, and was the owner of a cargo consisting of 638 barrels of No. 1 herring, 75 quintals of dry codfish, and other goods and articles, which said cargo was shipped on board the schooner Argonaut on or about the 23d day of August, A. D. 1861. Said schooner cleared from Westport aforesaid for Key West, in Florida, on the 27th day of August, A. D. 1861, and while on her voyage to such port, and on or about the 13th day of September, A. D. 1861, was captured by the United States steamer Susquehanna off Hatteras Inlet, sent with said cargo into New York in charge of a prize crew, and was libeled by the United States attorney as a prize of war. The said claimant appeared before the district court of the United States, sitting as a prize court, and obtained from said court a judgment in his favor, which judgment was for the return of the cargo to him, without costs against the naval captors. But an interval of six weeks having occurred from the time of the capture to the date of such release and restoration, during which time said cargo was in the hands and under the control of the captors, the fish and other perishable articles were damaged and rendered almost worthless, and many articles forming a part of said cargo were removed and have not since been seen by said claimant.

Subsequently, in the year 1872, the said claimant presented his case, by his own government, upon memorial, to the commission appointed under the treaty between the United States and Great Britain called and known as the "Washington Treaty," which commission is known as the "British and American Mixed Commission," and established his claim, as it seems to your committee, by good and competent evidence, all of which evidence, with the memorial, demurrer, and arguments, may be found in the reports of said British and American Mixed Commission, Volumes, X, XVII, and XXVI, now on file in the library of the Department of State.

From an examination of the case, as found in said reports, it appears that while the whole case was presented, with evidence as to its merits, in the hearings before said commission, the merits were not considered. The United States, by their counsel, demurred to the memorial of the claimant, as not showing a case within the jurisdiction of said commission, and specified as grounds of demurrer—

1st. That the said cargo having been discharged by the judgment of the district court, and no appeal taken from such judgment, the United States are not responsible for the acts of the said United States steamer Susquehanna, and are not liable to reclamation for damages thereof;

2d. That the question of costs and damages in regard to said alleged capture having been within the jurisdiction of said district court to determine, and the said court not having awarded damages to said claimant for such detention, and no appeal having been taken from the judgment of said court in that regard, no reclamation lies before this commission in behalf of the claimant for the damages claimed in said memorial; and

3d. That the memorial sets forth no facts or circumstances establishing a claim against the United States within the provisions of the twelfth article of said treaty.

The question of jurisdiction was argued at length, and an examination of the case in the reports shows that it was the only question argued and considered, and that consequently upon that ground the claim was disallowed by the commission. It was held that until the claimant had exhausted his remedy by appeal, and finds himself still aggrieved by the judicial tribunal of last resort, he has no ground of reclamation against the United States as the worker of injustice against him. It is only in the event of final failure of justice, after pursuit of all the regular and ordinary means of redress, that any nation is to be considered as working wrong against a foreign litigant, so as to entitle him to reclamation through the intervention of his own government. The litigant who stops short of this cannot avail himself of the provisions of the treaty.

In the case before the commission, the claimant files an affidavit setting forth the reasons why no appeal was taken from the decision of this prize court, which are, substantially, that the counsel who conducted the business for said claimant informed him that there was no necessity for taking such an appeal unless he, the said claimant, intended to commence suit in a civil court for damages; and that the said counsel gave it as his opinion that there would, without doubt, be other such claims arising in the course of the war which would be referred to arbitration, and that, being governed by such advice, no appeal was taken. Such right of appeal having now been lost by limitation, and the claimant having presented a claim which is *prima facie* a just one, it seems to your committee in accordance with the principles of justice and equity that the claimant should have the opportunity of presenting his case in the Court of Claims, that it may be heard upon its merits and judgment given accordingly.

Wherefore your committee report back the bill, with an amendment, and that the amended bill should pass.

Your committee report the accompanying bill as a substitute for the House bill (H. R. 606) introduced by Mr. Dingley, and recommend the passage thereof.

SETTLEMENT OF AN ACCOUNT WITH THE VICKSBURG
AND MERIDIAN RAILROAD COMPANY, &c.

JULY 26, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. RAY, from the Committee on Claims, submitted the following

R E P O R T:

[To accompany bill H. R. 5860.]

The Committee on Claims, to whom was referred the bill (H. R. 5860) to provide for the settlement of an account with the Vicksburg and Meridian Railroad Company for internal-revenue tax, and to refund the amount of said tax erroneously assessed and collected from said company, have had the same under consideration, and submit the following report:

The Vicksburg and Meridian Railroad Company of the State of Mississippi claims that it is entitled to have the sum of \$6,025.35 refunded to it by the Secretary of the Treasury, for the following reasons: It appears that this company was assessed by the United States Internal Revenue Department, and compelled under protest to pay to the government the sum of \$6,025.35 as "tax on interest on bonds" for the years 1865 and 1866.

This tax was assessed and collected in supposed conformity with the requirements of section 122 of the act of Congress of June 30, 1864, which reads as follows:

That any railroad, canal, turnpike, canal navigation, or slack-water company, indebted for any money for which bonds or other evidence of indebtedness have been issued, payable in one or more years after date, upon which interest is stipulated to be paid, or coupons representing the interest; or any such company that may have declared any dividend in scrip, or money due or payable to its stockholders as part of the earnings, profits, income, or gains of such company, and all profits of such company carried to the account of any fund, or used for construction, shall be subject to and pay a duty of five per centum on the amount of all such *interest, or coupons, dividends, or profits, whenever the same shall be payable*; and said companies are hereby authorized to deduct and withhold from all payments on account of any interest or coupons and dividends due and payable as aforesaid, the duty of five *per centum, &c.* (13 Stat. at L., 284.)

This section has been construed by the Supreme Court of the United States as imposing a tax upon the interest *received by the bondholder* accruing from the business of the corporations named, whether such interest was divided or undivided (as in payment of interest and dividends upon bonds or other funded indebtedness). If a *profit* was derived from the enterprise and declared, it was the proper subject of taxation, but if there were no net earnings and no profits, no such tax could properly be assessed or collected. (United States *vs.* Railroad Company, 17 Wall., 326; Stockdale *vs.* Insurance Company, 20 *id.*, 330; Michigan Central Railroad Company *vs.* Collector, 100 U. S., 598.)

The United States Internal Revenue Department seems to have con-

strued this section of the law to authorize the collection of a tax of 5 per cent. upon the stated *interest due* upon the bonded debt of a corporation, without regard to the fact whether such interest was paid or defaulted.

The collection of this tax from the Vicksburg and Meridian Company could have been made upon no other ground. This was a tax on the interest on the outstanding bonds of that company, which interest *fell due* in the years 1865 and 1866, *not one dollar of which was earned by the road during those years, and not one dollar of which was paid to the bondholders.*

The annual report of the president and managers of this company to the stockholders for the year 1868 (pages 6 and 7) shows that the receipts collected from all sources from May 10, 1865, to February 29, 1868, were \$1,541,457.48, and the expenditures for the same period were \$1,729,924.34, making an excess of expenditures over receipts of \$188,466.86, no part of which was paid in any form to the bondholders. It *appears*, as a matter of fact, that no interest was paid upon the bonded debt of the company from January 1, 1861, to January 1, 1868. (Annual report of the president and managers, &c., for year 1867, p. 21; also for 1868, p. 10.)

During all those years the company made no profits, declared no dividends, and made default in the payment of the interest on its bonded debt. In the year 1877 the Commissioner of Internal Revenue reopened and restated an account against this company for internal-revenue taxes which had accrued in preceding years, and brought suit against the company in the United States circuit court for the southern district of Mississippi, and in February, 1878, a judgment was rendered in favor of the United States for the sum of \$18,867.39, which judgment the company has paid in full.

On the trial of this case (as shown by a copy of the record) the company offered to prove the overpayment of said \$6,025.35 assessed as tax on account of interest on its bonded debt for the years 1865 and 1866, and to set off the same against the amount demanded by the United States in the action at law, but the court refused to allow evidence of said overpayment to be given,

because, under section 3228 of the Revised Statutes, the right to claim a refund of said sum from the said United States was barred by the statute of limitations.

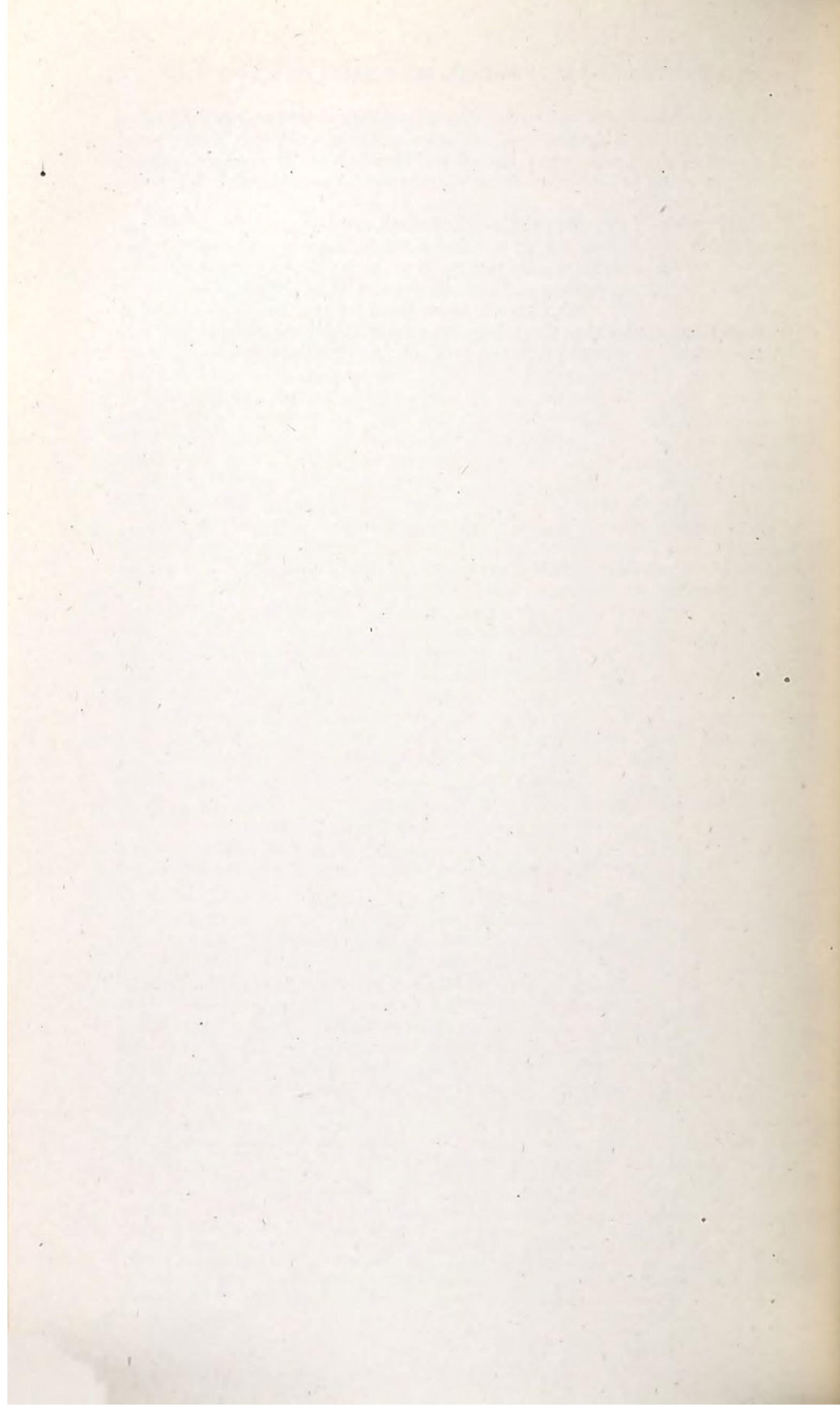
The equity of the claim of the company to have the set-off allowed seems to have been recognized by the court and to have been rejected upon purely technical grounds, which, if allowed to be resorted to by the defendant company, would have barred the entire claim of the government for back taxes for more than ten years. This same question was presented in the case of the Cumberland Valley Railroad Company, upon a bill to refund certain taxes erroneously collected from that company under circumstances similar to those involved in the present case, which bill became a law February 15, 1879 (20 Stat., 599). Mr. Dawes, from the Senate Committee on Finance, in reporting the bill, said:

It appears that the government itself, after the expiration of said two years, caused the accounts of the Internal Revenue Bureau with this company to be re-opened and re-examined. Such re-examination disclosed this claim, and also a claim of the government on said Company for delinquent taxes accruing during the same period of about \$9,000. The government, not being barred by any statute of limitations, required the payment of that sum into the Treasury.

The committee are of the opinion that the government, having itself opened up and re-examined its accounts with this party, could not, in the absence of any fraud, in equity or good conscience, set up a statute of limitations against the result of such re-examination. (Report No. 624, Forty-fifth Congress, third session.)

The government reopened and re-examined its accounts with the Vicksburg and Meridian Company on its own motion, and has been paid every dollar of the back taxes discovered through such re-examination; and the reasoning of the committee above quoted applies with full force to the present case.

The committee are of the opinion that the tax assessed upon this company as a tax on interest on its bonded debt for a period when the company made actual default in the payment of such interest, and when the expenditures of the company were much greater than its gross earnings, was not in conformity with the law as defined by the Supreme Court of the United States, and that the money thus collected should be refunded; and they therefore report back the bill (H. R. 5860), recommending its passage.



DAVID WEBSTER.

JULY 26, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. RAY, from the Committee on Claims, submitted the following

R E P O R T:

[To accompany bill H. R. 6835.]

The Committee on Claims, to whom was referred the memorial of David Webster for payment of fees as a witness before the Committee on Expenditures in the War Department, submit the following report:

David Webster, of Concord, N. H., on the 20th day of March, 1876, was duly summoned to appear forthwith before the House Committee on Expenditures in the War Department, of which committee the Hon. Hiester Clymer was chairman. Mr. Webster happened to be in the city at the time of the service of the subpoena, but was the next day intending to leave for his home in New Hampshire. He reported to the committee in obedience to the summons, and was informed by the chairman of said committee that he must remain in attendance upon said committee until his testimony was given, and that he must not depart without leave. In obedience thereto he remained, reporting nearly every day to said committee, until the 7th of April, 1876, when he gave his testimony. (See Report 799, first session, Forty-fourth Congress, on "The Management of the War Department," pp. 415 to 422.)

After he had testified he requested to be discharged, but the chairman of the committee informed him that he would again be wanted. He remained in constant attendance upon said committee until the 8th day of July, 1876, when his papers, which were taken by the committee at the time he gave his testimony on the 7th of April before mentioned, were returned to him, and Mr. Clymer, the chairman of the committee, told him he was discharged.

The evidence shows that Mr. Webster had been in attendance as a witness one hundred and ten days when he was discharged. He claimed pay for that period of time and also for his travel from Concord, N. H., to the city of Washington, 536 miles. He was allowed for attendance only from the 20th day of March to the 5th day of April, twelve days, at \$4 a day, \$48, and for five days more, at \$3 a day, \$15, making \$63 in all, with no allowance for travel.

It appears that Mr. Webster objected to receiving this amount, but finally took the money, protesting that he was entitled to his lawful fees for the full time and for his travel in addition.

On the 13th of June Mr. Webster addressed the following letter to Mr. Clymer, the chairman of the committee:

WASHINGTON, June 13, 1876.

To the Hon. H. CLYMER,

Chairman War Department Committee of Investigations, House of Representatives:

DEAR SIR: The undersigned most respectfully asks to be discharged as a witness in cases now under investigation before your honorable committee, if in your opinion

there is not a positive necessity for being longer detained. I further desire to have my papers returned that your honor stated would be returned to me when I was no longer needed as a witness by your committee.

Be so good as to order an immediate settlement, that I may not be detained from my home in Concord, N. H., any longer than is absolutely necessary.

I am, very truly, yours, &c.,

DAVID WEBSTER.

And in response thereto he was notified by Mr. Clymer that he could not be discharged until further notice. Hence he remained until the 8th day of July, 1876, as before stated.

The memorialist says that at the same time Hallett Kilbourn, esq., was confined in the Capitol for contempt, and that he felt obliged to remain in attendance during the long period he did remain, fearing that if he disobeyed the subpoena he might be dealt with the same as Kilbourn.

Your committee are of opinion that witnesses, when summoned to attend before committees of the House by its authority, and who obey the subpoena by actual attendance, as the claimant did in this instance, are entitled to their pay.

Previous to March 29, 1876 (see House resolution passed March 31, 1872), witnesses summoned to appear before the House or its committees were entitled to fees as follows: \$4 per day for attendance and five cents per mile for travel in coming to or going from the place of examination. On said 29th of March the following resolution was adopted by the House of Representatives:

The rule for paying witnesses summoned to appear before this House, or either of its committees, shall be as follows: For each day a witness shall attend, the sum of \$3; for each mile he shall travel in coming to or going from the place of examination, the sum of five cents each way; but nothing shall be paid for traveling when the witness has been summoned at the place of trial.

In this case Mr. Webster resided several hundred miles from Washington; he was here upon expense the whole time, and your committee recommend that he be paid the lawful fees for the one hundred and ten days, being \$339, and his lawful fees for travel from this city, where he was summoned, to his home, at Concord, N. H., being 536 miles, at five cents per mile, amounting to \$26.80 for travel, total \$365.80, deducting from which sum the \$63 already paid, leaves \$302.80 his due, and we report the accompanying bill in order that he may be paid, and recommend its passage.

APPENDIX.

To the honorable Senate and House of Representatives of the United States in Congress assembled:

The undersigned, your memorialist, David Webster, of Concord, N. H., respectfully represents that he was summoned as a witness on the 20th day of March, 1876, to appear forthwith before the Committee on Expenditures in the War Department of the House of Representatives, of which the Hon. Hiester Clymer was chairman, and a copy of the summons is hereto annexed.

In accordance with the command in said summons, the undersigned, on the 21st day of said March, appeared before said committee, and was instructed by the said chairman of said committee to remain in Washington, subject to the call of the committee.

On the 4th day of April, 1876, said chairman notified your memorialist to appear before said committee on the 7th day of said April, and in accordance with said notice your memorialist attended before said committee at the time named and gave his testimony. A copy of said letter is hereto annexed. Your memorialist then asked of the said committee a discharge as such witness, in order that he might return home to Concord, N. H. He was ordered not to leave Washington on any account, as he was needed further as a witness, and if he should leave without first being discharged as

such witness he would be punished for contempt, and imprisoned the same as Kilbourn, who was adjudged to be in contempt for not answering questions.

Your memorialist remained in Washington to answer to the call of said committee till the end of one hundred and ten days. Your memorialist repeatedly urged upon the chairman of said committee his discharge as such witness, from the 1st of May, 1876, till his final discharge, but was always denied his discharge. On the 13th day of June, 1876, your memorialist addressed a note to the committee urging his discharge as a witness; but said chairman replied that your memorialist must not leave, for the committee had not got through with him. A copy of said note is hereto annexed.

Your memorialist respectfully submits that he is entitled by law to the sum of \$440 as a witness before said committee on said summons, and he has received on the same the sum of \$63 only. Annexed to this memorial is a copy of the voucher on which said \$63 was paid.

Your memorialist respectfully claims that he is entitled lawfully to his fees for travel from Concord, N. H., to Washington, and return, and to \$440 for his attendance as a witness one hundred and ten days, less the \$63 represented by said voucher.

Your memorialist very respectfully asks that an appropriation be made by Congress to pay said claim.

DAVID WEBSTER.

STATE OF NEW HAMPSHIRE,
Merrimack, ss:

DECEMBER 9, 1880.

Then personally appeared David Webster and made solemn oath that all the matters that are stated as facts in said memorial, he knows to be true. Before me.

HENRY P. ROLFE,
Justice of the Peace.

By authority of the House of Representatives of the Congress of the United States of America.

To JOHN G. THOMPSON, Esq.,
Sergeant-at-Arms, or his Special Messenger:

You are hereby commanded to summon David Webster, No. 237 Pennsylvania avenue, Washington, D. C., to be and appear before the Committee on Expenditures in the War Department of the House of Representatives of the United States, of which the Hon. Hiestor Clymer is chairman, in their chamber in the city of Washington forthwith, then and there to testify touching matters of inquiry committed to said committee, and he is not to depart without leave of said committee.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 20th day of March, 1876.

[L. S.]

M. C. KERR, Speaker.

Attest:

GEO. M. ADAMS, Clerk.

I certify the within to be a true copy of the original subpoena.

JOHN G. THOMPSON,
Sergeant-at-Arms, House of Representatives.

HOUSE OF REPRESENTATIVES,
Washington, D. C., April 4, 1876.

DEAR SIR: You will please attend a meeting of the Committee on Expenditures in the War Department to give testimony, on Friday, the 7th of April, at 12 m.

Very truly, yours,

HIESTER CLYMER.

DAVID WEBSTER, Esq.,
237 Pennsylvania Avenue.

House of Representatives of the United States to David Webster.

For attendance as a witness before the committee of the House of Representatives investigating expenditures in the War Department, from the 20th day of March, 1876, to the 5th day of April, 1876, twelve days, at \$4..... \$48
Five days, at \$3..... 15

63

Approved.

HIESTER CLYMER, Chairman.

187-. Received of Mr. George Adams, Clerk of the House of Representatives of the United States, ——— dollars in full of the above account.

I certify the above to be a true copy.

INGHAM CORYELL.

CITY OF WASHINGTON,
District of Columbia, ss :

Personally came before me; James A. Main, a notary public in and for the city and District aforesaid, David Webster, who, being duly sworn, deposes and says as follows:

I am a resident of the city of Concord, in the State of New Hampshire. I came to the city of Washington in January, 1876, to prosecute a certain claim before the Committee on Appropriations of the House of Representatives, but after waiting a couple of months, and learning that it was not at all probable that said committee would take any action in the premises, I relinquished the matter, and on or about the 20th of March, 1876, prepared to return to my home in the city and State aforesaid, and intended to leave Washington on the morning of March 21, 1876; but at about midnight on the 20th of March I was called from my bed and served with a summons to appear as a witness before the Committee on Expenditures in the War Department.

The next morning I called at the House committee-room at the Capitol to see Mr. Clymer, chairman of the committee, and told him that I was anxious to return to my home, but he answered that I could not go until the committee discharged me. That I must hold myself in readiness to appear before the committee at any moment.

On the 4th day of April, 1876, I received a note from Mr. Clymer, chairman of the committee, requesting me to appear on the 7th of that month before the committee to give testimony, and I went on that day and testified. After I had testified before the committee, I asked Mr. Clymer if I might then leave the city and return to my home, and again he answered that I must not go until the committee discharged me, but to hold myself in readiness to appear again before the committee at a moment's notice from him, as "you will again be required after certain witnesses (naming them) have been examined." I waited until the month of May, and not having been discharged I consulted Lawyer Jordan about the matter and requested him and others to have me released from further attendance before the committee, but they met with no success. I frequently saw Mr. Clymer and made the same request of him, but he said my papers that had been offered in evidence had not been printed, and that I would be wanted again.

Some time in the month of June I caused to be written a letter to Mr. Clymer, asking for my discharge as a witness before the committee, the receipt of which he personally acknowledged, and told me I should be fully and well paid for my attendance, as my per diem would be \$4, unless he should discharge me and resummon me. And so I remained, to the neglect of my business at home, until about the 8th day of July, 1876, when my papers were returned to me, and Mr. Clymer told me I was discharged then from further attendance before the committee. I was then offered the sum of \$63 as payment for my attendance before the committee, but declined to receive it until I should consult Mr. Jordan, my attorney. He told me to receipt the \$63, as it would not prejudice my claim for witness fees for the entire period from the date I was summoned until the day I was discharged, and so I accepted the same, and on the 11th day of July, 1876, started for my home. During this entire period I was here at considerable expense to myself, and anxious to return home, but was detained by Mr. Clymer.

DAVID WEBSTER.

Subscribed and sworn to before me this 4th day of May, 1882.

[SEAL.]

JAMES A. MAIN,
Notary Public.

I, James M. Burnham, of Hopkinton, in the county of Merrimack and State of New Hampshire, on oath say: That I was a Capitol watchman in Washington, D. C., during the spring and summer of 1876. About the 20th of March of said year, Mr. David Webster, of Concord, N. H., informed me that he had been summoned as a witness to appear before the House Committee on Expenditures in the War Department, the chairman of which was the Hon. Hiester Clymer, of Pennsylvania, and for weeks and months following I almost daily met said Webster in and outside of the rooms occupied by said committee for purposes of investigation, and had assurances both from the said Webster and others, in whom I had confidence, that the said Webster was holding himself in readiness as a witness pursuant to orders from said committee. The said Mr. David Webster being then as now a resident of my own county and State, with whom I was on quite intimate terms. I kept myself well informed as to what was done by said committee, especially that portion of it relating to said Webster. Many times in said committee-room I have seen said Clymer and Webster engaged in conversation; and about the 1st of July, 1876, I heard said Clymer, near the door of the said committee-room, demand of said Webster that he should remain in Washington till discharged—that he (Webster) must not leave the city without his permission. A few hours before said Webster left Washington for home (about July 13, 1876) he angrily and bitterly complained to me concerning the refusal of Mr. Clymer to pay him the entire sum due him as a witness, and said he should leave

with a Washington attorney-at-law, for collection, a bill in full for everything due him as a witness. I am not interested in this claim sought to be established.

JAMES M. BURNHAM.

Subscribed and sworn to before me this 27th day of December, 1881. The affiant is the person he represents himself to be, and is a credible witness. Witness my hand and seal this 27th day of December, A. D. 1881.

[SEAL.]

JOHN F. JONES,
Notary Public.

I, R. W. Browning, of Washington, D. C., being sworn, do depose: That in the spring of 1876 I became acquainted with Mr. David Webster, of New Hampshire. I became aware of the fact that he was a summoned witness before the Committee of the House of Representatives on Expenditures in the War Department; that I was a regular attendant of the sessions of the committee when taking testimony; that I saw Mr. Webster nearly every day awaiting to give in his testimony; that I called upon the Hon. Hiester Clymer, at the request of Mr. Webster, and requested the said Clymer to call Mr. Webster as soon as possible, as he was very anxious to get away from Washington; that I was present when Mr. Webster gave his testimony; that in reply to the inquiry of Mr. Webster as to being at liberty to leave the city, the chairman, Mr. Clymer, said, "No; we are not done with you yet"; that I saw Mr. Webster after that in the committee-room and outside, and in reply to my inquiries he informed me that he was still awaiting discharge; that I met him the day of his discharge at the Capitol, when he informed me that Mr. Clymer has just discharged him that day (some time in July, 1876).

R. W. BROWNING,
331 Missouri Avenue.

Subscribed and sworn to before me this 3d day of May, A. D. 1882.

[SEAL.]

JAMES A. MAIN,
Notary Public.

CITY OF WASHINGTON,
District of Columbia, ss:

Personally came before me, James A. Main, a notary public in and for the District aforesaid, I. Parker Jordan, who, being duly sworn, deposes and says as follows:

I have been personally acquainted with Mr. David Webster since the spring of the year 1876; that my first knowledge of, or acquaintance with, said David Webster was when he was in attendance before the Committee on Expenditures in the War Department of the House of Representatives as a witness; that in May, 1876, the said David Webster came to me and stated he was in attendance as a witness before said committee of the House, and was anxious to be released from further attendance thereon in order that he might return to his home in New Hampshire, and to that end wished my assistance; that between the time of the coming to me of the said David Webster, and the 7th or 8th day of July, 1876, I frequently called personally on Mr. Clymer, chairman of said committee, and requested the discharge of said David Webster from further attendance as a witness before said committee, but that the said Mr. Clymer, chairman of said committee, positively declined at each interview to discharge the said Webster, and positively forbade him to leave the city of Washington until he was discharged; that on or about the 7th or 8th day of July, 1876, I called on Mr. Clymer, chairman of said committee, and again requested the discharge of the said David Webster, whereupon the said Mr. Clymer told me he would, on the next day thereafter, discharge the said David Webster from further attendance before said committee, and I so informed said David Webster; that on the next day thereafter, to wit, on or about the 8th or 9th day of July, 1876, the said David Webster called on me at my law office in said city, and stated to me that the clerk of the committee desired to pay him but for a small portion (I forget how much) of the time that he had been in attendance before said committee as a witness, and that he intended to leave the city without accepting the amount that had been offered him, and return to his home; that as a lawyer, I advised said Webster that the acceptance of the amount that had been tendered him would by no means prejudice his claim for fees for the entire period of more than one hundred days that he had been in attendance before said committee; and that upon this advice the said David Webster accepted a certain sum of money, but how much I do not now remember, and left for his home immediately.

I. PARKER JORDAN.

Subscribed and sworn to before me this 3d day of May, 1882.

[SEAL.]

JAMES A. MAIN,
Notary Public.

JAMES W. HARVEY.

JULY 26, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. RAY, from the Committee on Claims, snbmitted the following

R E P O R T:

[To accompany bill H. R. 6836.]

The Committee on Claims, to whom was referred the memorial of James W. Harvey, claiming compensation for work and material expended in the construction of the United States Arsenal at Rock Island, Ill., together with the evidence, having considered the same, make the following report:

The claimant is the lawful assignee of Joseph E. Parkins, the original contractor for the stone-work of the Rock Island Arsenal, November 19, 1863, which assignment was duly recognized by the War Department, and the service under the contract duly performed by the present claimant to the satisfaction of the government.

It appears from evidence that during the progress of the work, in January, 1866, General Rodman, ordnance officer of the United States Army, in command at Rock Island, with authority as director of the work, ordered a material change in the plans of the stone cornice from the specifications of the contract to a larger, heavier, deeper, and more costly design, one more appropriate to the character and style of the building, and involving an increased cost for larger stone, and additional expense for increased mechanical labor in designing, cutting, and fitting the stone in the cornice.

This order was accepted and carried out by the claimant, with the agreement with General Rodman that \$2.50 additional per lineal foot be allowed for the extra size, and \$2.50 additional per lineal foot for extra cutting of the stone.

Subsequently, on July 3, 1866, by a joint resolution of Congress, authority was given the War Department to pay the contractor at the rate of \$13.50 per perch "for all stone delivered and to be delivered for the construction of said arsenal."

From a report by the Second Comptroller of the Treasury, January 22, 1875, it appears that General Rodman, in his settlement with the contractor, abandoned the terms of his contract, and adopted the rate expressed in the resolution of Congress, and settled at that rate for all the stone found in the building, including the *new cornice*, and taking no measurement or account whatever of the *old cornice*, which had been prepared, delivered, and superseded. The mechanical work, therefore, expended on the *old cornice* was lost to the claimant; General Rodman's measurement only providing \$3 per perch additional for "increased

size" of the cornice when completed and accepted, and leaving no consideration whatever "for the increased mechanical labor" in designing, cutting, and fitting a more elaborate and superior cornice.

Inasmuch as the terms of the joint resolution of Congress implied payment "for all the stone delivered and to be delivered" it does not seem to be a fair and equitable construction that the claimant should be obliged to suffer a loss in the expenditure "for increased mechanical labor" by the change of the work at the instance of the government. That claim could have been legally satisfied by the measurement of the "old cornice," 985 feet and 2 inches long, at the price agreed upon, \$2.50 per lineal foot for mechanical labor, making the sum of \$2,462.92 now due the claimant.

This statement is clearly supported by evidence from official sources, as well as the statement of the Second Comptroller of the Treasury, made in 1875, on the merits of this claim, and the amount due the claimant on the principles of this report. Numerous acts for the relief of claimants have been passed by Congress under like circumstances with this case.

The committee believe it to be a just and equitable claim, which ought to have been allowed in the final settlement of the accounts of the contractor. Since that time he has petitioned Congress continuously to consider the circumstances of his losses, and to pass an act for his relief.

The committee therefore recommend that the Second Comptroller of the Treasury be authorized to adjust the accounts of the claimant in accordance with the terms of this report, and for that purpose recommend the passage of the accompanying bill.

FRANKLIN CROCKER.

JULY 26, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BOWMAN, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 6837.]

The Committee on Claims, to whom was referred the petition of Franklin Crocker, asking compensation for removal of a sunken wreck in Hyannis Harbor, Massachusetts, report as follows:

The following favorable report in said case was made by the Committee on Claims of the Forty-sixth Congress, third session (Report No. 26):

The petitioner, in his petition, avers that in June, 1879, he proposed, for the sum of \$370, to remove from Hyannis Harbor the sunken wreck of the schooner Golden Eagle; that, with little knowledge of the condition of said wreck, he supposed from the representations of others and in part from the government in its advertisement for proposals, that there remained but a small amount of coal in her, and that, in the employment of persons in the immediate vicinity, the removal could be made at small expense and at little cost to the government; that there proved to be upwards of *forty* tons of coal, considerably imbedded in mud, with the wreck, so that its removal resulted in a loss of \$355, without any consideration of his own time and labor, and he asks for such allowance as may seem reasonable and just.

In answer to a letter addressed by a member of this committee to the Chief of Engineers, he has placed in our possession a very full report from General Warren, the engineer in charge of the work. It appears by this report that General Warren, on November 30, 1878, informed the Chief of Engineers as to the condition of the wreck and the necessity for its removal, and submitted an estimate of \$500 as the probable cost of its complete removal; that afterwards, on May 5, 1879, General Warren was advised that the Secretary of War had authorized the expenditure of \$500 in removing this wreck, for which provision had been made in the river and harbor act of March 3, 1879, and directing him to take immediate steps to remove the same. In compliance with this order, General Warren advertised for proposals, as follows:

PROPOSALS FOR REMOVAL OF WRECK.

ENGINEER OFFICE, U. S. A.,
Newport, R. I., May 21, 1879.

Sealed proposals will be received at this office until 12 o'clock noon on the 5th day of June, 1879, for the complete removal of the wreck of schooner Golden Eagle, in Hyannis Harbor, Mass.

This is the wreck of a schooner of about 125 tons, with about 10 tons of coal in her hold. She lies inside of the breakwater, in about 15 feet of water, and does not seem to be imbedded.

Blank forms for proposals and guaranty will be sent on application to this office.

G. K. WARREN,
Major Engineers and Brevet Major-General, U. S. A.

On June 5, 1879, the proposals were opened as follows: Franklin Crocker, \$370; Joseph H. White, \$490; George L. & H. W. Phillips, \$495; George W. Townsend, \$550; and W. F. Pierce, \$2,000. The contract was let to Mr. Crocker for \$370, it

being the lowest bid. Mr. Crocker, prior to making his proposal, addressed a letter to General Warren, in which he stated that he had made no examination of the work to be done, and did not know how much it would cost to do the work, but expressed his desire to obtain the contract, and it was afterwards awarded to him.

General Warren, in his report, says:

"I learn from my inspector, J. A. Curtis, that Mr. Crocker began work with two sloops and two divers on June 17, 1879. After working four days and using ten kegs of powder he desisted, and engaged Messrs. G. L. & H. W. Phillips (who were the third lowest bidders, for \$495) to complete the work, and is said to have paid them \$550. The Brothers Phillips commenced work on the wreck June 28, and completed its removal July 11, 1879. There can be no doubt that if the original bid of the Phillips' could have been accepted instead of Mr. Crocker's, that they would have done the work for what they proposed to do it for, viz, \$495, nor that the second lowest bidder, J. H. White, would have done it, as he proposed, for \$490. Since, by the intervention of Mr. Crocker's inexperienced proposal, the United States was prevented from securing these competent and reasonable men's offers, it appears that equity should not hold the United States to pay Mr. Crocker more than the difference between their proposals and his, granting that our specifications made him think there was less coal remaining in the wreck than our specifications stated."

We think, in view of the facts stated in the petition and recited by General Warren in his report, that Mr. Crocker should be allowed, in addition to the sum received by him, the further sum of \$120, being the difference between his bid and that of Joseph H. White, who was the next lowest bidder, and who proposed to do the work for \$490. We therefore report back the petition, and recommend that he be allowed said sum of \$120 in full payment for said work, and herewith report a bill for his relief and recommend its passage.

This committee adopts the said report, and reports the accompanying bill, and recommends that the same do pass.

Petition of Franklin Crocker.

To the honorable Senate and House of Representatives, Washington, D. C. :

The undersigned, Franklin Crocker, of Hyannis, Mass., respectfully represents that in June, 1879, he proposed, for the sum of \$370, to remove from Hyannis Harbor the sunken wreck of schooner Golden Eagle.

With very little knowledge of the condition of said wreck, he supposed from the representations of others and in part from the government call for proposals, that there remained but a small quantity of coal in her, and that in the employment of parties in the immediate vicinity the removal could be made at small expense and at little cost to the government.

There proved to be upwards of 40 tons of coal, considerably imbedded in mud, with the wreck, so that its removal resulted in a loss of \$355, without any consideration of his own time and labor, for which the said Crocker respectfully asks for such allowance as may seem just and equitable. And in this spirit would ever pray.

Respectfully,

FRANKLIN CROCKER.

HYANNIS, *March* 16, 1880.

JOHN FRASER.

JULY 27, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BOWMAN, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5680.]

The Committee on Claims, to whom was referred the bill (H. R. 5680) for the relief of John Fraser, have considered the same, and respectfully report:

The Committee on Public Buildings and Grounds of the Senate (Forty-seventh Congress, first session, Report 191) made the following report in this case:

That on December 5, 1878, Mr. James G. Hill, Supervising Architect of the Treasury Department, was suspended from office by the following Department letter:

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., December 5, 1878.

JAMES G. HILL, Esq.,
Supervising Architect:

SIR: In view of the indictment pending against you in the circuit court of the United States, in Chicago, of which you have given me verbal notice, I am directed by the President to suspend you from this date from the execution of your official duties until after the trial.

Very respectfully,

JOHN SHERMAN,
Secretary.

On the same day Mr. John Fraser, who was at that time employed as superintendent of the construction of Bureau of Engraving and Printing building, was directed to assume the duties of the office during the suspension of Mr. Hill, by the following letter:

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., December 5, 1878.

Mr. JOHN FRASER,
*Superintendent of construction of the new building
for the Bureau of Engraving and Printing:*

SIR: You are hereby directed to take charge of the office, and perform the duties, of Supervising Architect during the suspension of Mr. J. G. Hill from duty.

Very respectfully,

JOHN SHERMAN,
Secretary.

On May 22, 1879, Mr. Hill was directed to resume the duties of Supervising Architect by the following letter:

TREASURY DEPARTMENT,
SECRETARY'S OFFICE,
Washington, D. C., May 22, 1879.

Mr. JAMES G. HILL:

SIR: Having been acquitted on the indictment found against you in the circuit court of the United States for the northern district of Illinois, you will resume your duties

as Supervising Architect of this department, from which office you were suspended December 5 last.

I am, very respectfully,

JOHN SHERMAN,
Secretary.

Mr. Hill received his pay in full from December 1, 1878, to May 31, 1879, viz, two thousand two hundred and fifty-eight and $\frac{20}{100}$ dollars, which period covered the time of his suspension.

Mr. Fraser was paid as superintendent of construction, while acting as Supervising Architect, from December 6, 1878, to May 22, 1879, a period of five months and sixteen days, one thousand three hundred and forty-four dollars, being at the rate of eight dollars per diem.

Your committee are of opinion that Mr. Fraser is entitled to additional compensation to the amount of the difference between the appropriated salary of Supervising Architect and the pay he received as superintendent of construction of the Bureau of Engraving and Printing building, from December 1, 1878, to May 5, 1879, and report a substitute for the bill, and recommend the passage of the substitute as reported.

This committee adopt said report as their own, and therefore report back the accompanying bill, and recommend that the same do pass, with an amendment for the payment to said Fraser of the sum of \$914.20.

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W. E. TOMLINSON.

JULY 26, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. E. W. ROBERTSON, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 6838.]

The Committee on War Claims, to whom was referred the petition of W. E. Tomlinson, of Benton County, Mississippi, submit the following report:

The facts out of which this claim for relief arises will be found stated in House report of the Committee on War Claims, No. 1007, second session, Forty-sixth Congress, a copy of which is hereto appended.

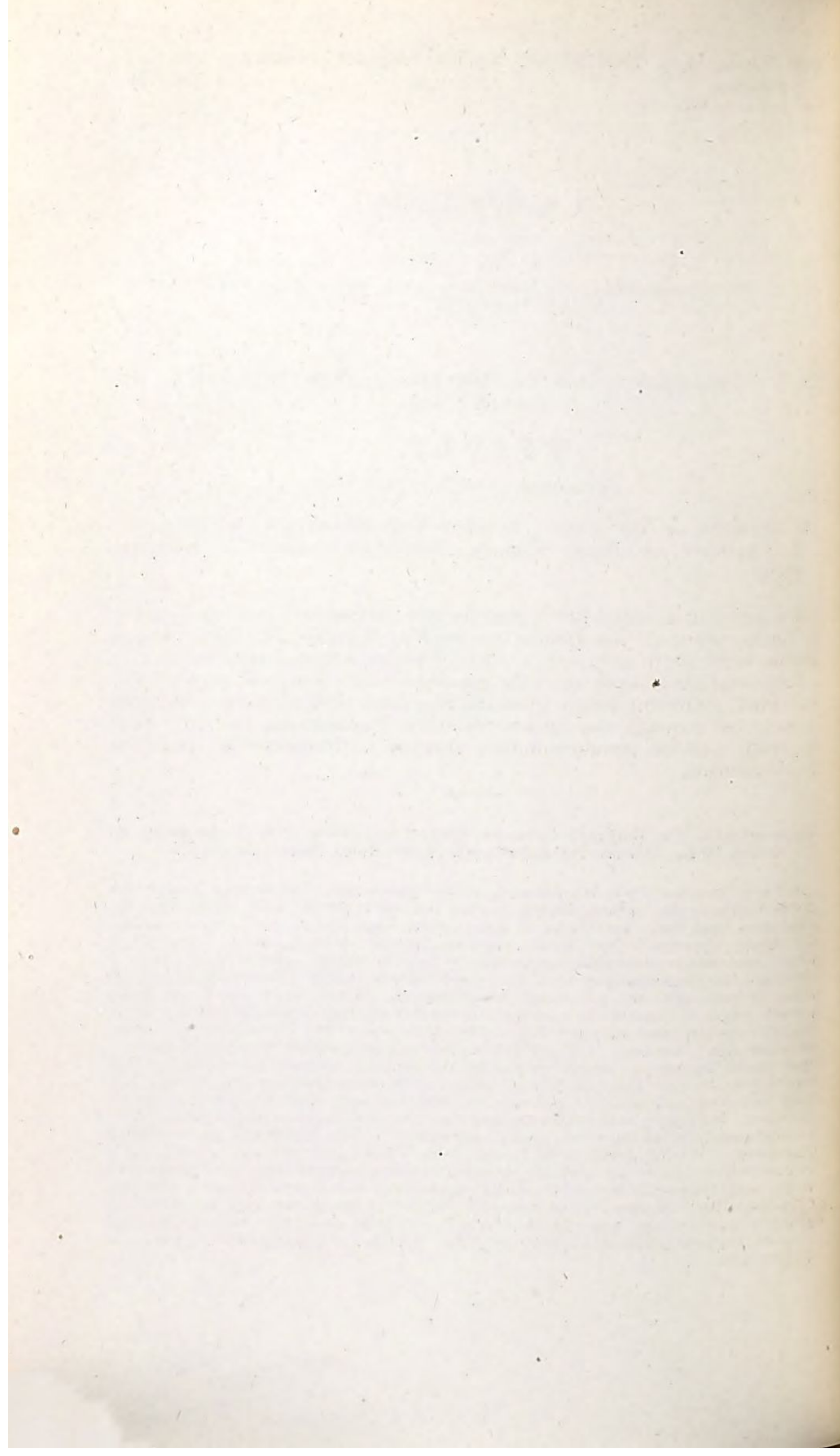
Your committee adopt the said report as their own, and report herewith a bill conferring power upon the Secretary of War to have the case investigated through the Quartermaster's Department, and to report the result, with his recommendation thereon, to Congress for its action in the premises.

The Committee on War Claims, to whom was referred the petition of W. E. Tomlinson, of Benton, Miss., for stores and supplies taken by the United States Army, report:

That said Tomlinson was a loyal man, as the passes given by General Grant, the provost marshals, the oath of allegiance filed, and other proofs, fully show; that the government took large quantities of corn, fodder, hogs, sheep, cows, horses, mules, and wagons, is proved in part by the vouchers given at the time, and by the affidavit of the quartermaster and other apparently reliable evidence. Under the proof as it now stands the Commissioners of Claims would have certainly allowed a portion of his claim. It was cognizable before said commissioners. While his excuse for not filing it would not, in a court of law, obviate the statute of limitations, if plead, yet, we think, the government cannot reject a just claim, under the circumstances proven, and refuse him a hearing. He says that he had engaged, before the expiration of the time, a man, Parham, to prepare or aid him in preparing the papers, but the day they were to meet he was taken sick, and before his recovery Parham was gone to Kentucky on a visit, and when he returned the time was out. Parham corroborates the statement. Petitioner was not aware that the time would expire as and when it did. His sickness, Parham's absence, and his ignorance of the limitation, prevented its presentation. While ignorance of the law is no excuse, yet this fact, coupled with sickness, which is such an unavoidable casualty and misfortune that prudence cannot escape, ought to prevent the government from pleading the statute on its own vouchers.

The committee therefore report herewith a bill conferring power upon the Secretary of War to have the case investigated through the Quartermaster's Department, and to report the result, with his recommendation thereon, to Congress for its action in the premises.

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JOHN T. STRATTON ET AL.

JULY 26, 1882.—Laid on the table and ordered to be printed.

Mr. JADWIN, from the Committee on War Claims, submitted the following

R E P O R T :

The Committee on War Claims, to which was referred the petition of John T. Stratton, Edgar McDavitt, and Samuel H. Deenscomb, of Memphis, Tenn., report as follows :

The facts out of which this claim for relief arises will be found stated in House Report of the Committee on War Claims, No. 416, second session Forty-sixth Congress, a copy of which is hereto appended.

Your committee adopt the said report as their own, and report adversely to the petition.

[House Report No. 416, Forty-sixth Congress, second session.]

Mr. FERDON, from the Committee on War Claims, submitted the following report:

Your committee have had under consideration the claims of John T. Stratton, Edgar McDavitt, and Samuel H. Deenscomb, of Memphis, Tenn. These claimants were joint owners of a certain cotton-shed and store-house in said city, which were taken possession of by the United States Government during the late war, in the prosecution of the same, for the storing of commissary supplies, and during part of the time converted into a military hospital. This property was taken possession of about the 1st of July, 1862, and used by the Government of the United States without compensation until the 1st day of January, 1864, at which time it was put upon the rent-roll, and received rents from the government, leaving a balance due them—in the case of John T. Stratton, to the amount of \$5,236.67; in the case of Edgar McDavitt, the sum of \$2,180; and in the case of Samuel H. Deenscomb, the sum of \$5,236.67; making a total of \$12,653.34.

We have not been able to obtain any satisfactory information from the United States Quartermaster's Department, although we have sought for the same, that any amount is due to the parties herein stated beyond that already paid to them. Besides, we find that these buildings referred to were in insurrectionary territory; that a state of war actually existed; and that the use of said buildings was really needed by the government in the prosecution of the same. We, therefore, recommend that the prayers of the petitioners be denied.

Z. C. NOLEN.

JULY 26, 1882.—Laid on the table and ordered to be printed.

Mr. JADWIN, from the Committee on War Claims, submitted the following

REPORT:

The Committee on War Claims, to whom was referred the petition of Z. C. Nolen, of Haywood County, Tennessee, report as follows:

That this claim is for the value of four horses, alleged to have been taken from claimant by United States troops during the late war. Claim stated at \$700.

It appears from the proof submitted that claimant filed his claim before the Commissioners of Claims, and this commission, after a thorough examination, rejected the claim, for the reason that they were not satisfied that the claimant was loyal. He was sheriff of his county all through the war. His acting as high sheriff under Confederate authority was clearly a disloyal act.

The committee are of the opinion that it would be an unwise precedent to open the case at this late day on that question. The adjudication of the commission should be final.

The committee report adversely, and recommend that the petition do lie upon the table.

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WILLIAM G. FORD.

JULY 26, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GEORGE D. WISE, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 6039.]

The Committee on War Claims, to whom was referred the bill (H. R. 6039) for the relief of William G. Ford, report as follows:

The facts out of which this claim for relief arises will be found stated in Senate Report No. 444 of the Committee on Claims, first session Forty-seventh Congress, a copy of which is hereto appended.

Your committee adopt the said report as their own, and report back the bill with the recommendation that the same be amended by inserting at the end of line 17 the following: "with the right of appeal to the parties as in ordinary cases."

Senate report No. 444, Forty-seventh Congress, first session.

Mr. CAMERON, of Wisconsin, from the Committee on Claims, submitted the following report, to accompany bill S. 1746:

The Committee on Claims, to whom were referred the petition and accompanying documents of William G. Ford, respectfully report:

The petitioner is a citizen of the United States and a resident of Memphis, Tenn. In the month of May, 1865, S. S. Webb & Co., of Mobile, were the owners of fifty bales of cotton, stored in warehouses in Mobile, Ala., weighing altogether 25,568 pounds.

This cotton was seized by the authorities of the United States Government at the surrender of Mobile, April 12, 1865, and by Capt. Samuel Lappin, assistant quartermaster United States Army at Mobile, on the 19th day of May, 1865, delivered on board the bark Ada Carter, consigned to Brig. Gen. Stewart Van Vliet, chief quartermaster United States Army at New York, and by him turned over to Simeon Draper, United States cotton agent, Treasury Department, and sold, and the proceeds paid into the Treasury of the United States.

On the 7th of July, 1865, the said cotton or the proceeds were sold by Webb & Co. to the petitioner, who in 1866, he alleges, filed his claim and proof with the Secretary of the Treasury for settlement.

Here, it is alleged, the case was delayed, and a hearing postponed from time to time, until the petitioner was notified by the Secretary of the Treasury that that department had been entertaining jurisdiction of such claims under a mistake as to their authority, and that all such cases must be referred to the Court of Claims.

It does not appear when this notice was given to the petitioner, but he alleges that he at once took steps to have proceedings instituted in the Court of Claims, when he was informed that his papers, proofs, and exhibits had been mislaid in the Treasury Department, or lost, which occasioned delay until September, 1868, when they were found. He was then advised by his counsel that by the provisions of the statute of

limitations in such cases, passed March 11, 1863 (vol. 12, p. 820), he was barred from that court; that the statute began to run in August, 1866, and expired in August, 1868, about one month before he procured his papers from the Treasury Department.

The statute referred to provides as follows:

"SEC. 3. * * And any person claiming to have been the owner of any such abandoned or captured property may at any time within two years after the suppression of the rebellion prefer his claim to the proceeds thereof in the Court of Claims."

The act of May, 1872 (vol. 17, p. 134), authorizing the Secretary of the Treasury to settle for cotton seized, does not apply to this case, for the reason that it covers only cases of seizure which occurred *after June 30, 1865*. This cotton was shipped to New York in *May, 1865*, having been seized April, 12 1865.

The proceeds of this cotton was paid into the United States Treasury under the abandoned and captured property act, and is there held in trust in that fund for whoever may, in the Court of Claims, establish their right to it according to law. (See reply of Secretary of the Treasury McCullough to the Court of Claims, and printed evidence in *Dominick O'Grady vs. the United States, 1870*; also, *United States vs. Kline, 13 Wall., 128.*)

But in response to an inquiry made of the Secretary of the Treasury in regard to this claim, he says, under date of January 18, 1878: * * * "The records of this department do not show the filing at any time of the claim of William G. Ford for 50 bales of cotton seized in May, 1865, at Mobile, Ala."

The original petition states that the "petition, with vouchers and papers in the Treasury Department thereafter to be attached, referred to as exhibits, was accordingly drawn and forwarded from New York to Washington, and petitioner *supposed* timely proceedings had been instituted, *until some time afterward*, to wit, in September, A. D. 1868, the *papers were ascertained* to have been *mislaid* in the Treasury Department, and the statute of limitations had interposed."

There is a supplemental or amended petition, which goes more into detail as to the losing of papers in the Treasury Department, which is sworn to by the petitioner.

The testimony herein alluded to is all that bears on the question of diligence on the part of the claimant or negligence on the part of the Treasury Department in mislaying papers.

The petitioner asks Congress to pass a bill authorizing him to prosecute his suit in the Court of Claims, notwithstanding the statute of limitations; and your committee, being satisfied that the petitioner ought to "have his day in court," report the accompanying bill, and recommend its passage.

WILLIAM G. FORD.

JULY 26, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GEORGE D. WISE, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 6839.]

The Committee on War Claims, to whom was referred the petition of William G. Ford, administrator of John G. Robinson, deceased, report as follows:

The facts out of which this claim for relief arises will be found stated in Senate report of the Committee on Claims, No. 293, first session Forty-seventh Congress, a copy of which is hereto appended.

The committee adopt the said report as their own, and recommend the passage of the accompanying bill.

The Committee on Claims, which has had under consideration the bill (S. 648) for the relief of William G. Ford, administrator of John G. Robinson, deceased, having had the same under consideration, submit the following report:

The case was reported favorably from this committee during the second session of the Forty-sixth Congress.

The committee readopt that report, as follows:

It appears from the depositions taken and certain record evidence submitted to the mixed commission that John G. Robinson was a British subject resident in the city of New Orleans, La., and was engaged in the business of a cotton broker, doing a business of from 100,000 to 120,000 bales annually for many years prior to 1863, and up to the time of his death, in 1869.

That on the 4th of May, 1862, the following order was issued and published in the city of New Orleans:

“HEADQUARTERS DEPARTMENT OF THE GULF,
“New Orleans, May 4, 1862.

[General Orders, No. 22.]

“The commanding general of the department having been informed that rebellious, lying, and desperate men have represented, and are now representing, to the honest planters and good people of the State of Louisiana that the United States Government, by its forces, have come here to confiscate and destroy their crops of cotton and sugar, it is hereby ordered to be made known, by publication in all the newspapers in this city, that all cargoes of cotton and sugar shall receive the safe-conduct of the forces of the United States, and boats bringing them from beyond the lines of the United States forces may be allowed to return in safety, after a reasonable delay, if their owners so desire; *provided* they bring no passengers except the owners and managers of said boat and of the property so conveyed, and no other merchandise except

provisions, of which such boats are requested to bring a full supply for the benefit of the poor of this city.

"By command of Major-General Butler.

"GEO. C. STRONG,
"Assistant Adjutant-General."

And on the 16th February, 1863, the following order was issued and published in the same city :

"CUSTOM-HOUSE, NEW ORLEANS,
"Collector's Office, February 16, 1863.

"The United States military and other authorities at New Orleans permit cotton to be received here from beyond the United States military lines, and such cotton is exempt from seizure or confiscation. An order is in my hands from Major-General Banks approving and directing the policy. The only condition imposed is that cotton or other produce must not be bought with specie. * * *

"GEORGE S. DENISON,
"Special Agent of the Treas. Dep't, and Acting Col. of Customs.

"Approved.

"D. G. FARRAGUT, Rear-Admiral."

It further appears that the said John G. Robinson purchased from one Robert B. Hurt, of Madison County, Tennessee, 238 bales of cotton which were invoiced by the said Hurt to the said Robinson, and the purchase-money receipted for by the said Hurt, at Ponchatoula, La., on the 7th day of March, 1863, and that said cotton was put upon two schooners, the Aleyon and General Worth, at Owl Bayou, in Louisiana, about six miles from Ponchatoula, consigned by the said Hurt to the said Robinson at New Orleans, and bills of lading taken for the same, on the 20th March, 1863; and on the morning of the 21st March, 1863, the officers of the said two schooners were taken prisoners, and the cotton seized by the United States military authorities and taken to New Orleans, where the cotton was sold, and the proceeds held by the authorities of the United States.

It further appears that immediately after the seizure of this cotton the said Robinson applied to the British consul at New Orleans, who, with the said Robinson, made several applications to the military authorities at New Orleans, first to restore the possession of the cotton to the said Robinson before it was sold, and after the sale to pay to the said Robinson the proceeds, all of which failed, however; and on the 6th January, 1864, the consul made it a subject of a special communication to Lord Lyons, the minister plenipotentiary, &c., of Great Britain at Washington, detailing the facts and sending to the minister the bills of lading and invoice of the cotton; and on the 29th January, 1864, Lord Lyons transmitted the papers to Mr. Seward, the then Secretary of State, asking that Mr. Robinson be paid the value of said cotton. On the 10th February, 1864, Mr. Seward informed Lord Lyons that "I have commended the case to the attention of the Secretary of War." And from this time until the death of the said Robinson, in 1869, it was a matter of correspondence between the British minister and the Department of State; but the War Department appears never to have acted upon the claim further than to suggest, in 1867, that a remedy would probably be found in the Court of Claims.

In 1869 the said Robinson died, leaving a will, by which he gave one-fourth of his estate to his brother, William Robinson, and one-fourth to his sister, Mary G. Baker, each residing in England, and one-fourth each to two American citizens resident in New Orleans, and soon thereafter William Robinson died.

William G. Ford administered upon the estate, and in March, 1872, filed before the Mixed Commission on British and American Claims, under the 12th article of the treaty of May 8, 1871, a claim for \$88,260, more or less, being the proceeds of the sale of the said 238 bales of cotton. The claim was vigorously and ably contested by the attorney for the United States upon the ground of want of jurisdiction, want of title to the cotton in Robinson, regularity and legality of the administration, &c.; but after a full hearing, on the 24th September, 1873, the commission made the following award:

"WILLIAM G. FORD, ADMINISTRATOR,	} No. 328.
vs.	
"THE UNITED STATES.	

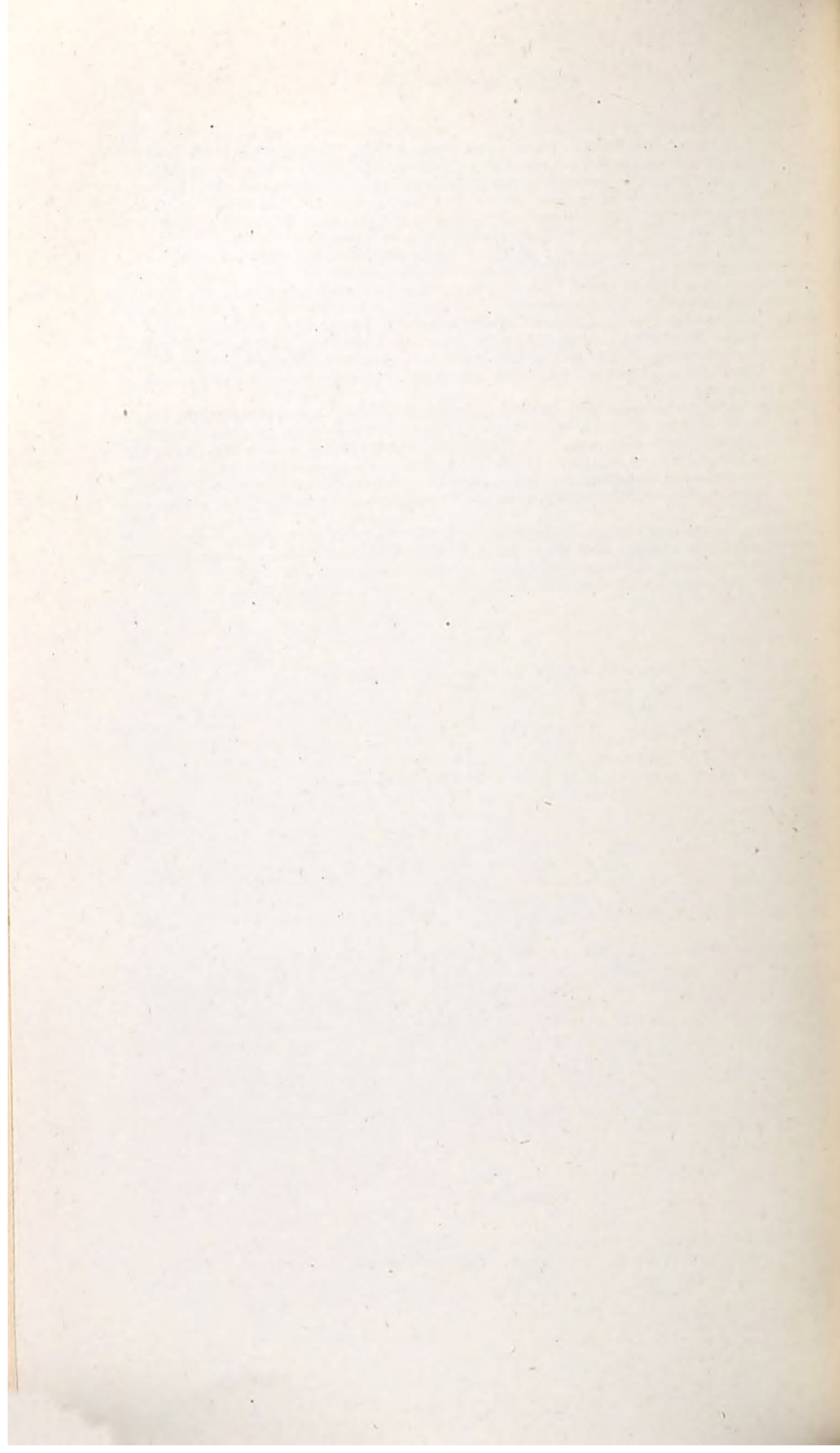
"We award the sum of \$29,638 to be paid in gold by the Government of the United States to the Government of Her Britannic Majesty, in respect of so much of the above claim as relates to the interest of Mary G. Barker, or her representatives, under the will of John G. Robinson, deceased, bearing date October 8, 1858.

"L. CORTI,
"RUSSELL GURNEY,
"Commissioners."

No opinion was filed by the commission, but from the points made in the case it is clear that the award was based upon a recognition of the justice of the claim and the right of Ford, as administrator, to prosecute it, and that the petition was dismissed without prejudice, so far as the interests of the American legatees were concerned, for want of jurisdiction. William Robinson, one of the legatees in England, having died a short time after the testator, was not mentioned in the award. Before the creation of the mixed commission John G. Robinson made an earnest and continuous effort to collect this claim through the agency of the British minister, but without avail. The administrator, after the death of Robinson, believing it to be a proper case for the mixed commission, filed it there, and the commission awarded relief as to the legatee, who was a British subject, but dismissed as to the American legatees for want of jurisdiction. It was then too late for the administrator to sue in the Court of Claims to recover what is due, if anything, the two American legatees. Hence he now asks authority to commence suit in said court, relieved from the bar of the statute of limitations, and the committee is of opinion that under the circumstances of the case it should be granted.

The committee finds, upon examination, that this claim was considered by the House Committee on Claims of both the Forty-fourth and Forty-fifth Congresses, and a favorable report in each Congress. The bill passed the House on the 5th May, 1876, but was not considered by the Senate. In the Forty-fourth Congress there was an adverse report by the Senate Committee on Claims, but upon a careful examination of that report the committee is satisfied that it is based upon erroneous conclusions as to several material facts.

Believing, as the committee does, that there is merit in this claim, and that if allowed to test the questions of law and fact in the Court of Claims nothing will be allowed by the court unless the case is clearly made out, the committee report the bill back, with the recommendation that it pass.



CLAIM OF THE COUNTY OF SCHUYLKILL, STATE OF PENNSYLVANIA.

JULY 26, 1832.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. THOMAS UPDEGRAFF, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 1463.]

The Committee on War Claims, to whom was referred the bill (H. R. 1463) to authorize the proper accounting officers of the Treasury Department to audit and pay the claim of the county of Schuylkill, in the State of Pennsylvania, for money advanced by it under allotments made by soldiers from said county during the late rebellion, &c., submit the following report:

By the provisions of section 12 of the act of Congress approved July 22, 1861, entitled "An act to authorize the employment of volunteers to aid in enforcing the laws and protecting public property," the Secretary of War was authorized to establish a system of allotments for the use of the Army. The Secretary of War thereupon established such regulations so that any soldier in the service of the United States might allot or assign the whole or any portion of his monthly pay during any period, definite or indefinite, as he might designate, such portion of pay so allotted or assigned to be paid by the United States Government direct to such allottee or assignee instead of the soldier.

During the early part of the war the payments to troops on account of pay due by the government were very irregular and frequently postponed for a number of months. In consequence of this the families of soldiers frequently suffered for want of the necessaries of life, and therefore the authorities of the county of Schuylkill, State of Pennsylvania, to the end that such suffering in that county might cease, caused the soldiers who had enlisted from that county to be informed that if they desired to avail themselves of the allotment system above referred to, and would assign their pay to the county of Schuylkill, the county would advance such monthly pay so assigned regularly every month for the benefit of the wife or other person designated by the soldier.

Several thousand soldiers enlisted from Schuylkill County in the service of the United States and availed themselves of this offer, and allotment rolls from about 70 different companies of troops were from time to time forwarded from the field to the authorities of Schuylkill County, who, during the period commencing October, 1861, and ending March, 1863, paid out to the families of such soldiers upon such allotments several hundred thousand dollars.

The allotment rolls referred to, which assign from each soldier usually

the sum of \$10 a month to the county for the purpose indicated, were at once transmitted to the Paymaster-General of the United States Army, and notifying him of the assignments.

Numerous letters from the Paymaster-General, acknowledging the receipt of such allotment rolls from the commissioners of Schuylkill County, are filed with the proof submitted.

All such allotment rolls, either in original or in copy, were transmitted by the Paymaster-General to the several paymasters of the Army having charge of the disbursements for pay due to the several companies to which the soldiers who had allotted their pay belonged, with directions to deduct the sum so allotted from the monthly pay due such soldiers.

The Paymaster-General during the period above stated paid to the said county large sums of money, about four-fifths of the whole sum advanced by the county by reason of such allotment; and all such sums so paid by the Paymaster-General were deducted by the several paymasters from the soldiers' pay.

A balance of about \$48,000 is alleged to be due to the county of Schuylkill by reason of the payment by it under such assignment of soldiers' pay. This balance is made up of sums of money not collected by the several paymasters having at the time charge of the accounts of the soldiers who had made these allotments to the county, or which, if collected, were not transmitted to the Paymaster-General for payment by the latter to the county.

In many instances the payments were made direct to the soldiers, instead of the county, for the reason that the paymaster had no notice of the assignment, because of the failure of the paymaster having charge of the accounts of the soldier who had so allotted his pay to transfer to his successor (when he was transferred to another field or the soldier's regiment sent to another army) the allotment rolls in question. Or it may have arisen from the fact that the soldier was on detached service, and the paymaster who paid the soldier may have had no notice of the assignment and therefore paid the soldier his monthly pay in full. If so, the fault was with the War Department in not perfecting the system of allotments so as to require notice to be transmitted with the soldier. Certainly the fault did not lie upon the county of Schuylkill. It had performed its whole duty as to notice to the United States in transmitting the allotment rolls to the proper authority, to wit, the Paymaster-General, who acknowledged the receipt of such notice.

It would have been an impossibility for the county to have followed up the soldier in his various places of service and to have given notice to the different paymasters who may have had charge of his accounts. They had nothing to do with and had no control over either the soldier, the pay accounts of the company officers, or of the paymaster. All it could do was to notify the head of the financial department of the Army and leave to him the detail of notice to his subordinates.

Hence your committee are constrained to hold that the claim is valid, and that the government ought in right to refund the same; and report back the bill with the recommendation that it do pass.

PETER MARCH AND OTHERS.

JULY 26, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. THOMAS UPDEGRAFF, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 1328.]

The Committee on War Claims, to whom was referred the bill (H. R. 1328) for the relief of Peter March and others, report as follows:

The amounts claimed by the several persons named in this bill are for wages as members of the crew of the steamer *Prima Donna* during the time they were held as prisoners of war by the Confederate government, and which they claim the government is bound to pay. Other members of the same crew, who were captured at the same time with the claimants, have been paid their wages during the period of their captivity by the government, one of whom was Joseph McCulloch, pilot of said steamer *Prima Donna*, whose case was settled on the 27th day of May, 1874, and the sum of \$1,200 paid to him.

The facts, as shown by papers on file, are, that the steamer *Prima Donna* was chartered by Capt. J. V. Lewis, assistant quartermaster, United States Army, November 22, 1864, for the transportation of supplies between Cincinnati, Ohio, and Nashville Tenn.; that there was no written charter party or agreement made between the government and the owners of the steamer, but it was expressly understood and agreed between Captain Lewis and the owners of the steamer, that the United States was to assume all and every hazard known as war risks that might be incurred by the steamer while employed under said agreement; that having discharged her cargo at Nashville, the captain and crew of the *Prima Donna* were required to proceed down the Cumberland River about 17 miles, and refused so to do, on the ground that the country along the banks of that river was infested with Confederates, but by military order, and by virtue of military force, were compelled to undertake the voyage, and while making it, the vessel was, on the 3d of December, 1864, captured, set on fire, and considerably injured by the Confederates, at a point called Ball's Landing, 18 miles below Nashville, and the claimants captured and held as prisoners of war during the time set forth in their foregoing respective claims.

No fact is in dispute in this case. The only question is, is the government bound to pay upon the facts as admitted by the government? We think it is. By the admitted terms of the contract, the government assumed all risks of war, and agreed to pay the running expenses of the boat. This of course included wages of the crew, and placed the gov-

ernment as a charterer in the position of owner during the continuance of the charter; the crew thereby becoming subject to military orders.

But whatever the legal effect of the original agreement might be, it is clear that the captain and crew, while at Nashville, were impressed into military service, compelled to go with their vessel against their remonstrance, and by superior military force and power, into the enemy's country, where, without any fault of theirs, they were captured and held as prisoners of war, and, in justice, and in accordance with precedents, are entitled to their wages during the term of their captivity.

The same question raised in this case arose in the case of John Ray (see House Report No. 208, second session, Forty-fifth Congress); and also in the report of Mr. Briggs, from the Committee on Naval Affairs, No. 125, second session, Forty-sixth Congress, in which appears the following letter of the Third Auditor of the Treasury Department:

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,
Washington, D. C., January 24, 1878.

In response to your letter of the 22d instant, asking as to the practice of this office in reference to claims filed by employes of the Quartermaster's Department for compensation as such employes while held as prisoners of war, you are informed that it has not been the custom of this office to make any allowance to such persons merely as damages for detention while in captivity. The action of the office has been founded on the theory that persons hired by the Quartermaster's Department and carried on the rolls of that department continue to be the servants thereof during captivity, and are entitled to be paid at the rate of hiring until discharged from the service. * * *

The favorable action of this office has not, however, been confined to persons in the service of the Quartermaster's Department under express contract, but has been extended to the crews of boats which have been impressed into the military service, which crews have been subsequently captured, upon the theory that by the impressment of the boat the government makes the employes of the owners its servants.

There is no special statute authorizing these allowances, but the act of 1817 (sec. 277 Rev. Stats.), imposing upon the Third Auditor the duty of examining all accounts of the Quartermaster's Department, has been deemed to confer ample authority for the action taken.

In reference to compensation, the rule has been to continue to an employe the pay he was receiving from his employer at the time of the capture, and to continue the same while he is actually held as a prisoner of war—that is to say, up to the time of his parol—allowing, in addition, a reasonable time for his return to the port of shipment.

I am, sir, very respectfully, your obedient servant,

HORACE AUSTIN, *Auditor.*

The committee therefore report back the bill, with the recommendation that it do pass.

RICHARD MAYES.

JULY 26, 1882.—Laid on the table and ordered to be printed.

Mr. THOMAS UPDEGRAFF, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 4039.]

The Committee on War Claims, to whom was referred the bill (H. R. 4039) for the relief of Richard Mayes, submit the following report:

That this claim is for the value of fencing and materials of dwelling-house, smoke-house, barn, and stable; and also for two horses, wagon, and harness, three cows, seven hogs, provisions, and two bales of cotton, alleged to have been taken from claimant by United States troops during the late war. Claim stated at \$2,444.

It appears from the proof submitted that the claimant filed a claim before the Commissioners of Claims, and after a thorough investigation by that commission, the claim was rejected, for the reason that the claimant had no title to the property, and that there was no proof that the property was taken and used by the Army. (See Commissioners' report of December 5, 1877.)

The committee are of the opinion that the adjudication of the commission should be final, and report adversely, and recommend that the bill do lie upon the table.

THOMAS CHADWELL, ADMINISTRATOR OF E. H. CHILDRESS, DECEASED.

JULY 26, 1832.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HOUK, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 2702.]

The Committee on War Claims, to whom was referred the bill (H. R. 2702) for the relief of Thomas Chadwell, administrator of the estate of E. H. Childress, deceased, report as follows:

That the bill authorizes and directs the Secretary of the Treasury to pay to Thomas Chadwell, administrator of E. H. Childress, deceased, the sum of \$212.50 for rent of property occupied by the United States Army at Nashville, Tenn., during the late war, as shown by regularly certified vouchers issued to him for the same.

That the property in question was regularly rented by the officers of, and used by, the government after the city of Nashville was in the possession of the military authorities of the United States; and that the quartermaster charged with procuring quarters, &c., regularly reported the renting of said premises, and that having no means out of which to pay the rent issued his official vouchers therefor.

This claim has been rejected by the accounting officers of the Treasury who have had the same under consideration, by reason, as they assert, "that under existing laws and decisions claims for rent arising in Tennessee during the war could not be paid."

Your committee are of opinion that accounts like the one in question, founded upon an express contract for the rent and occupation of buildings, made by the proper officer of the government and within the strict letter and line of his duty, and within the scope of the appropriations made for the support of the army, &c., and which no special legislation or appropriation was necessary to meet or pay it, were not within the consideration of Congress when they passed the act of July 4, 1864, or the act of February 9, 1867. In the latter act the State of Tennessee was excepted.

The committee, therefore, report back the bill, with the recommendation that it do pass.

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PRIVATE LAND CLAIMS IN CERTAIN STATES AND TERRITORIES. .

JULY 26, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. HAZELTON, from the Committee on Private Land Claims, submitted the following

REPORT:

[To accompany bill H. R. 6840.]

The Committee on Private Land Claims, having had under consideration a bill (H. R. 3149) to provide for ascertaining and settling private land claims in certain States and Territories, respectfully submit the following report, to accompany substitute for said bill:

A bill that provides for the adjudication of claims in the district courts is objectionable, in that the courts having jurisdiction in the cases should have access to the entire archives of the Spanish and Mexican documents and records; and as these documents and records are kept in one place, they could not be readily accessible to all of the courts of the several districts in the Territories.

To illustrate this proposition, we will take the Territory of New Mexico, wherein the larger number of these claims are awaiting adjudication. The old Spanish and Mexican archives are in the possession of the surveyor-general of that Territory at Santa Fé. The place for holding the United States court for the first judicial district is at Santa Fé, and that court could have ready access to the archives in question; but the United States courts for the second and third districts in that Territory are at Albuquerque and Mesilla respectively, 75 and 300 miles distant from the place where the archives are kept.

In determining the character of these titles it is necessary in nearly every case, on account of the antiquity of the title papers, to introduce, for the purpose of comparison, other original documents already passed upon, bearing the signatures of the same Spanish or Mexican officials whose signatures, or purported signatures, appear on the muniments of title in the case at bar, in order to correctly determine whether they are genuine or not; as it is seldom the case that living witnesses can be found by whom the nature, whether genuine or not, of the official signature can be shown.

The evidence of the abandonment, annulment, forfeiture, or fraudulent character of a grant may exist in the archives, in documents having no *direct* connection with the muniments of title in the case at bar in one district, and the same documents may embrace evidence of a similar character, or the reverse, in another case pending in another district, and if the documents were sent back and forth from the archives to the several judicial districts they would be liable to loss; or perhaps the document showing the annulment or fraudulent character of the grant

in the case at bar might be unknown to the court before whom the cause may be pending, on account of its not being among the papers directly connected with the case under investigation.

The production in court of the original muniments of title should be required in all cases, when in existence, as the adjudicating authority should give them a personal inspection to avoid being imposed upon by fraudulent title. This could not be done if the court were to act upon certified copies only.

The Mexican colonization law of 1824 limited grants of eleven square leagues to each grantee, but prior to that time there was no such law in force and all perfect grants anterior thereto could not be restricted to eleven square leagues, and no such general limitation of the area of these claims can be made by Congress without a violation of individual rights guaranteed by the terms of the treaties referred to; and it is only competent for Congress to provide that each claim shall be adjudicated under the particular Spanish or Mexican law under which the concession was made.

For these reasons we deem it essential for the proper adjustment of these claims that the court adjudicating them should have direct and ready access to the old Spanish and Mexican archives; and as a commission, in our opinion, is the proper authority to adjudicate these grants we beg leave to report that, having had under consideration H. R. 3149, entitled "A bill to provide for the ascertaining and settling of private land claims in certain States and Territories," and approving of its provisions, your committee recommend that the same do pass, believing that it is free from the objections indicated, and provides a means for the safe and speedy adjustment of these land claims.

The courts in most instances are already overburdened with business, and could not give these cases that prompt and careful consideration which the interests of the government require, and where such large properties are involved. There are a large number of these Spanish and Mexican claims in the State of Colorado and the Territories of New Mexico and Arizona which remain unadjudicated. Under the present laws they are now investigated by the respective surveyors-general of those States and Territories, upon whom, in addition to their ordinary duties, is imposed the duty of taking testimony and reporting to Congress their opinions in all these cases.

These surveyors-general are not supposed to possess the legal attainments and qualifications which are requisite in a judicial officer, yet they are required to act in a quasi-judicial capacity in cases often involving hundreds of thousands of dollars in value, and upon the title to immense tracts of land, necessarily passing upon intricate legal propositions embracing a construction of the laws of Spain and Mexico, and the rules of evidence, which no one, not learned in the law, is competent to do. The surveyor-general of New Mexico, who has had a large experience in investigating this class of claims, in his annual reports to the Commissioner of the General Land Office, has repeatedly called attention to the necessity of prompt action on the part of Congress upon this matter, as will be seen from the Land Office reports of 1876, '77, '78, '79, '80, and '81, and in our opinion he truthfully says that further delay on the part of Congress to provide for suitable means for the adjudication of these claims amounts almost to criminality. The present method is unsatisfactory both to claimants and the government, as Congress fails to act on the reports of the surveyors-general in these cases, and as a necessary result the titles remain unsettled and uncertain. The proceedings are to a great extent *ex parte*, and while the claimants are always present with their witnesses there is no attorney to represent the government.

The other duties of the surveyors-general are such that they have not the time, even though they possessed the requisite legal acquirements, to protect the interests of the government in these cases. They are compelled to act as attorneys for the government and judge impartially between it and the claimants—rather an anomalous position.

Congress should not be required to act in a judicial capacity, nor can it, on mere copies of papers, act with any degree of correctness in the confirmation of a grant; and as a result it is liable either to do nothing and permit these claims to remain unsettled and unconfirmed, or they must accept the recommendations of the surveyor-general in regard to their validity or invalidity, thus virtually giving to one man the final decision of these important cases. And should the surveyor-general err in any particular, Congress is almost sure to follow in his footsteps and confirm that error, or, failing to act at all, it does injustice to the claimant, who is entitled to have his claim passed upon and finally determined. The obligations of the treaties, and the interests of the claimants and the public, demand that these titles be adjudicated, and that speedily.

In the courts the expenses will be onerous to claimants, who, as a rule, are limited as to means independent of their interest in the grants.

Your committee believe that the method provided by this bill for the adjustment of these claims to be a proper one, as it will prove to be a safe, speedy, and comparatively inexpensive manner of adjusting these land titles.

The present executive of New Mexico urges the passage of this bill by Congress, in the following language:

In relation to all the unconfirmed grants, there should be a commission appointed empowered to come out here and take testimony and order surveys. In this way meritorious cases can be separated from fraudulent ones. This commission should exist for two years, and after that time all grants should be held as prescribed. Though the government must keep the treaty in good faith, it cannot be held in violation thereof for Congress to fix a time when the subject shall be considered closed. The uncertainty now existing very greatly retards the development and growth of the Territory.

The following letter from the Commissioner of the General Land Office will show the importance of some legislation on this subject of land grants:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 9, 1878.

SIR: On the 18th ultimo, Hon. A. G. Thurman, chairman of the Committee on Private Land Claims, United States Senate, addressed a communication to this office, inclosing a copy of Senate bill 376 "to provide for ascertaining and settling private land claims in certain States and Territories," and requesting my opinion on said bill, and a statement of any facts which might be of importance relative thereto.

In compliance with the above request, I have the honor to inclose herewith the aforesaid bill, with the following report:

As the title of the bill indicates it proposes a method for ascertaining and settling the private land claims in the States and Territories therein named. Private land claims, as defined, in the body of the bill, are claims based upon titles which had their origin under the Spanish or Mexican Governments prior to the date of the acquisition by the United States, of the Territory within which they are situated.

By the treaty of Guadalupe Hidalgo, ratified May 30, 1848, and the treaty commonly known as the Gadsden purchase, ratified June 30, 1854, the Mexican Republic ceded to the United States the territory embraced within the present limits of the States of California and Nevada, and the Territories of Arizona and Utah; part of the State of Colorado, and parts of the Territories of New Mexico and Wyoming.

By the eighth and ninth articles of said treaty of 1848, which, by reference thereto, was made a part of the subsequent treaty of 1854, it was stipulated that property of every kind, within the ceded territory "now belonging to Mexicans, not established there, shall be inviolably respected. The present owners, the heirs of these, and all

Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guarantees equally ample as if the same belonged to citizens of the United States." "That Mexicans, in the aforesaid Territory, who shall not preserve the character of citizens of the Mexican Republic conformably with what is stipulated in the preceding article shall be incorporated into the Union of the United States, and be admitted at the proper time * * * to the enjoyment of all the rights of citizens of the United States according to the principles of the Constitution; and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property," &c.

For the purpose of carrying into effect the foregoing treaty stipulations, Congress, by the eighth section of the act of July 22, 1854 (Stat. at L., vol. 10, page 308), and the act of August 4, 1854 (Stat. at L., vol. 10, page 575), directed the surveyor-general of New Mexico, "under such instructions as may be given by the Secretary of the Interior to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico, and for this purpose may issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a full report on all such claims as originated before the cession of the territory to the United States by the treaty of Guadalupe Hidalgo of eighteen hundred and forty-eight, denoting the various grades of title, with his decision as to the validity or invalidity of each of the same under the laws, usages, and customs of the country before its cession to the United States; and shall also make a report in regard to all pueblos existing in the Territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos, respectively, and the nature of their titles to the land. Such report to be made according to the form which may be prescribed by the Secretary of the Interior; which report shall be laid before Congress for such action thereon as may be deemed just and proper with a view to confirm *bona-fide* grants, and give full effect to the treaty of eighteen hundred and forty-eight, between the United States and Mexico; and until the final action of Congress on such claims, all lands covered thereby shall be reserved from sale or other disposal by the government, and shall not be subject to the donations granted by the previous provisions of this act."

The provisions of this section were extended to the then Territory, now State of Colorado, by the act February 28, 1861 (12 Stats., p. 176), and to the Territory of Arizona by the act of July 15, 1870 (16 Stats., p. 304).

It is impossible to determine the exact number of private land claims there are in the States and Territories named in the bill, but it appears from a schedule which accompanied the annual report for the year 1856 of the surveyor-general for the Territory of New Mexico, that there were, at the date of said report, one thousand and fourteen documents relating to grants of land by the Spanish and Mexican governments, on file in his office, and from an abstract accompanying said report, that there had been selected from the public records or archives deposited by the former governments at Santa Fé, 197 grants to land.

During the period of twenty-three years the aforesaid act of 1854 has been in force, the surveyor-general has reported to Congress 123 claims; of this number only 23, one claim in every five, are found to be embraced in the abstract of grants above referred to, yet the surveyor-general in each case, with the exception of a very few of the pueblo or town claims, reports the claim as founded upon a complete grant. These facts lead to a conclusion that either the foregoing abstract of grants only represents one-fifth of the number of grants or private land claims in the Territory of New Mexico, or that 100 of the 123 claims which have been reported, 71 of which have been confirmed by Congress, are based upon spurious titles. The latter theory, in my opinion, is not tenable, as it is scarcely possible, much less probable, that the surveyor-general could have been imposed upon to such an extent in his investigations of these claims. We must therefore conclude that there are in the Territory of New Mexico alone, about one thousand private land claims, seventy-one of which, as before stated, have been confirmed, leaving over nine hundred yet to be adjudicated.

Taking the actual number of claims reported in the past twenty-three years, 123, by the surveyor-general under the act of 1854 as a basis, the average number reported annually is 5. At this rate, under the present system, the probable date when the last of the 900 unconfirmed claims will be reported upon and confirmed is in the far future. As the act of 1854 also extended the public land system to the States and Territories named, and the lands thereby, so far as they were not known to be covered by private land claims, became subject to appropriation under the laws regulating the disposal of the public domain, and as the limits of these private claims are not known to the officers upon whom devolves the duty of the execution of the public surveys, they are extended over them, and the settlers thus invited to settle upon lands to which it is, and will forever remain, impossible for them to obtain a valid title under existing laws.

On the other hand there are many persons who are deterred from settling upon the

public lands by the fear that the land settled upon may be subsequently found to be within the limits of an unconfirmed, unsurveyed private land claim.

The claimants, in the mean time, must wait without remedy, and their grants which would be valuable if the title were completed by a confirmation or patent, must remain comparatively worthless, as is the case with all property where the vendor offers for sale an incomplete title and prospective litigation.

As many of the grants made by Spain and Mexico were for a given quantity of land within larger exterior boundaries, *i. e.*, eleven square leagues or a less quantity within boundaries that may perhaps embrace an area of fifty, sixty, or a hundred leagues, and the said act of 1854 having placed the full quantity described in the grant in a state of reservation, until finally acted upon by Congress, it results in rendering unavailable for an indefinite period, large tracts of land, which properly belong to the United States.

The United States, by the long delay in the settlement of these claims, not only loses the sale of its lands, but the development of the resources of that country will create additional incentives for the manufacture of fraudulent title papers, with a view of securing therewith the public lands. The lapse of time, with the consequent death of witnesses and the loss or destruction of ancient records relating to land titles, adds to the possibilities of such forged and otherwise fraudulent title papers passing without detection the scrutiny of the officers whose duty it may become to act upon them.

As the act under which these claims are presented for the action of the surveyor-general does not contain any limitation within which they must be filed, neither the surveyor-general nor Congress is directly responsible for this delay. But even if did, and the claims were all properly presented, a proper attention by the surveyor-general to his executive duties leaves him but little time to attend to the examination of complicated and confused evidences of title, most of which are in a foreign language. And when such claims have been reported to Congress and assigned to its appropriate committee, no member of such committee can conscientiously recommend that the United States convey the large tract of land, which the most of these grants contain, without giving to each case that careful, patient, and protracted examination which belongs to the judge rather than the legislator.

However able, competent, and valuable a surveyor-general may be as an executive officer, or to conduct the business arising in a surveyor-general's office, he may, and probably will, lack the technical legal knowledge which will enable him to cope successfully with voluminous title papers complicated by the sophistry of skillful attorneys. Yet, under the present system, the surveyor-general is required to surmount the difficulties; for, however carefully Congress may examine his work, it must not be forgotten that Congress acts on a copy of the papers filed with the surveyor-general, and hence cannot determine whether the grant is antedated or forged, or contains any of those defects which can be detected only by an inspection of the original record.

And, again, from the fact that the majority of these grants were never segregated from the public domain by actual survey or measurement in the field under the Spanish or Mexican governments, but bounded by natural landmarks without reference to objects known to our public-land system, it impossible for Congress to determine the quantity of land the claimants are seeking a confirmation for. It is not within the power of the surveyor-general to furnish this information; and if it is within the knowledge of the claimants, which is very seldom the case, they prefer to withhold it in order to obtain a confirmation of their claim by metes and bounds without regard to quantity.

This is, perhaps, best illustrated by the case of the Maxwell or Beaubean and Miranda grant, which was recommended by the surveyor-general for confirmation, and confirmed by Congress according to the boundaries described in the grant, it appearing in one of the documents constituting the basis of the claim before Congress that said boundaries embraced an area of only about seventeen leagues, while, in point of fact, it is found by actual survey to contain about four hundred leagues, equal to about 1,800,000 acres. Under the Mexican laws, customs, and usages the claimants in this case were only entitled to twenty-two leagues, or about 97,000 acres. This is not an isolated case, but one of many that have occurred and will continue to occur under the present imperfect system for the settlement of these claims.

It appears that as early as May, 1858, less than four years after passage of the act of 1854, the results of the present defective system were felt in Congress. The House Committee on Private Land Claims of the first session, Thirty-fifth Congress, in their report No. 457, state that the claims "forwarded by the surveyor-general have received the most careful attention your committee could give them; but in justice to the committee I must say this examination has been confined entirely to what seemed to be the principal papers in each case, having no time to scrutinize the evidence and the application, as made by the surveyor-general, of the Spanish and Mexican laws and usages to each of them in detail. *Nor will it ever be in the power hereafter of any*

committee of this House to make such an examination as will be entirely satisfactory should these claims be allowed to accumulate before Congress. It is now ten years since the Territory of New Mexico was acquired, and nearly four years since the surveyor-general was authorized to examine and report to us the private land claims of its people; and, although protected, as is supposed, by treaty in the enjoyment of their property, no man in that Territory, without some action of Congress, can say that his title, however acquired, would hold against any claimant who might purchase his lands from the government. * * * The people of New Mexico are not at all pleased to be compelled by law to submit their muniments of title to one man whose fitness for surveying is not supposed to qualify him particularly for discharging the duties of a judge, and yet whose opinions are expected to control, to a great extent, the final action of Congress on their claims.

"Because of this, and that Congress, if it shall reserve the right to itself of passing judgment, must rely upon the report of an examining commission, your committee believed it very important that such a board *should consist of at least three persons*, whose recommendations, whether to Congress or to a judicial tribunal, would be entitled to and command more respect than your committee or the House can award to the report of the surveyor-general alone."

It will be observed that this report not only sets forth the difficulties that Congress had to contend with as early as 1858 in dealing with these claims, but it also suggests practically the same remedy proposed by the bill now before me. If it was considered a necessary measure then to relieve Congress of a duty that it was impossible for it to satisfactorily discharge, as well as to protect the interests of the government and do justice to the private claimants, in view of the present confused condition of titles to lands in the Territory of New Mexico, the result of the operation of the system introduced and continued in force up to the present time by the act of 1854, for the disposal of the public lands before the private land claims had been ascertained or settled, it is obvious that a far greater necessity now exists for the repeal of that system, and one more effectual and speedy in its operation provided.

In this connection it might be added that this office is in almost daily receipt of letters direct from the parties or by reference from the department, from different sections of the State of Colorado and Territory of New Mexico, complaining bitterly of the evils growing out of and praying for relief from the hardships they are subjected to by the present tardy and defective system for the settlement of these claims; the grant claimants complaining that it is tantamount to a confiscation of their property to compel them to expend its value, or, perhaps more, to protect their rights against the settlers, and on the other hand the settlers charge the grant claimants as being land grabbers who are endeavoring to eject them, without color of right, from the lands they have settled upon and improved in good faith under the public-land laws.

The bill before me contains all of the best features of the act of March 3, 1851, (Stats. at L., vol. 10, p. 308), and supplemental legislation under which the private land claims in the State of California, a class of claims in every respect similar to those provided for in the present bill, have been finally confirmed. This legislation was the outgrowth or the fruits of an experience of about a half a century in the settlement of private land claims in the territory acquired from France by the treaty of 1803, commonly known as the Louisiana purchase, and from Spain by the treaty of 1819, comprised within the present limits of the State of Florida. In the settlement of said claims, various methods were adopted, by commissioners with full power and jurisdiction to finally confirm all claims containing less than a limited quantity. Second, by commissioners whose jurisdiction was limited to simply reporting the facts in each case for the final action of Congress thereon, and third by the United States courts, who were clothed with a special jurisdiction for that purpose, each tribunal being entirely separate and independent of the other. The California act of 1851 consolidated the best features of these methods into one, by providing a commission with the necessary power and jurisdiction before whom the claims should be first presented, with an appeal therefrom, the filing of a transcript of the proceedings of the commission with the court to operate *ipso facto* as an appeal to the district court of the United States; the decree of the commission could only become final upon the dismissal of the appeal therefrom by the court. Experience has fully demonstrated that this system has yielded the best results of any that has yet been tried, and, in my opinion, is as near perfect as any that can be devised.

It might perhaps be suggested that inasmuch as in the majority of the cases these claims will have to go into court for the *final* adjudication of title, that the commission might be dispensed with, and the courts vested with original and exclusive jurisdiction in all cases. This course would be open to the following objections:

First. Delay, which is the principal objection against the present mode of settling these claims under the act of 1854. In this connection, it should be taken into consideration, first, that the courts already have all of the legitimate business they can attend to; and second, that if the adjudication of the title in these cases were made an original proceeding in the courts the whole case would have to be made up in the

court, requiring in each case a period varying from two or three days to a week or ten days, according to the particular circumstances in each case, while on the other hand, if the case is brought into court in the form of a complete transcript of the proceedings of the commission thereon it can be disposed of in a comparatively much shorter time.

If the confirmation of these claims were left entirely to the court, it would, in my judgment, be a low estimate to fix the limit within which they would all be confirmed at twenty-five years.

Second. The commission, as constituted in the proposed bill, with its interpreters and two law agents, one of whom is required to be skilled in the Spanish language, furnishes a more perfect and effectual means for the protection of the interests of the United States than if the adjudication of these claims were devolved upon the courts. The bill contemplates, that one of the law agents shall be in constant attendance upon the commission, while the other, whose duties will be more in the nature of a special attorney or agent, is abroad collecting testimony in behalf of the government. In many instances it will be necessary for each agent to visit the premises in person to procure the information and witnesses necessary to a proper defense of the interests of the government. The district attorney could not possibly perform these duties if it were required of them, for the reasons, first, that outside of the time necessary to the discharge of the duties properly pertaining to their respective offices they would have but little time to devote to these duties, and second, that it would be necessary in order to properly perform them for the district attorney of each judicial district to be familiar with the Spanish language.

Another important feature deserving of attention in connection with the consideration of the bill is the great saving to the government which will be effected in the adjudication of claims thereunder, as compared with that under the present system provided by the said act of 1854.

To enable the surveyor-general of the Territory of New Mexico to report to Congress the private land claims in his district, as required by said act of 1854, there have been annually appropriated, from two to three thousand dollars. Dividing the average of these amounts, \$2,500, equally among the five claims (the average number), annually reported by the surveyor-general, it results in a net cost to the United States of \$500 for each claim; and to continue the computation to those which have not been reported or confirmed, estimated at \$900, the aggregate cost to the United States will amount to \$450,000. And after the expenditure of this sum of money on these claims it leaves them in a condition that Congress is almost as uncertain what final disposition should be made of them as if they had never been reported.

On the other hand the proposed bill suggests a method by which said claims can be judicially determined at a cost to the United States of one-fourth of that above stated, or, instead of each claim costing the United States \$500 to have it reported to Congress, as is the case under the present system, its confirmation by the commission and courts will cost the United States \$120.

As I have already had occasion to state, it is impossible to determine the exact number of unconfirmed claims there are in the States and Territories named in the bill; from the data at hand, the number has been estimated to be about 900. This number may be in excess, or it may be less than the actual number; but in either event, it is just as important and necessary that they should receive early and speedy action. It is justly due to the claimants and the settlers, who are directly concerned in having their rights finally adjudicated, and necessary to prevent the perpetration of frauds in the future upon the government.

This office in its annual reports for the past five or six years or more has set forth the condition of land titles in the Territory of New Mexico, the only Territory in which the system provided by the act of 1854 has been in active operation since the passage of said act, and urged such legislation as that proposed by the bill before me for the settlement of all of the private land claims within the territory, excepting the State of California, acquired from Mexico.

The bill under consideration was drafted in this office and the department. After carefully reviewing it, I have the honor to suggest the following amendments thereto:

First. On line 9 of section 4, between the words "of" and "the," insert the words "one of," so as to read that "it shall be the duty of one of the said agents to attend all meetings of the commission," &c.

Second. On line 24 of section 7, between the words "district" and "court," insert the words "or territorial."

Third. On line 2 of section 8, between the words "district" and "and," insert "territorial," so that when amended it will read "that the commission herein provided for and the district, territorial, and Supreme Courts of the United States," &c., and;

Fourth. Add to section 12 the following, after the word individual, on line 11, "and the fact of the existence of the city, town, or village, on the seventh day of July, one thousand eight hundred and forty-six, being duly proven, shall be accepted as *prima*

facie evidence of a grant to the corporation thereof, or to the individual under whom the lot-holders claim."

The last amendment above suggested has been taken from the fourteenth section of the act of March 3, 1851, under which the private land claims, including claims to town property, in the State of California were confirmed. It was also incorporated into and made a part of the instructions issued by the department under the act of July 22, 1854. The government having thus adopted at an early day after the cession of the Territory the above rule in regard to what shall constitute sufficient evidence of the right of persons holding property under the corporate authorities of a town to a confirmation, and the fact that the system of the Spanish and Mexican Governments in regard to town grants is entirely different from that in force under the public land laws, constitute the grounds upon which I have based my suggestion in regard to said fourth amendment.

In accordance with the foregoing views, I have the honor to earnestly recommend the early passage of the aforesaid bill.

Very respectfully, your obedient servant,

J. A. WILLIAMSON,
Commissioner.

Hon. C. SCHURZ,
Secretary of the Interior.

In order to obtain the latest data on the subject, the honorable Secretary of the Interior was requested by Mr. Hazelton of your committee to furnish certain information as to the number and aggregate area of the grants approved and confirmed, and the following has been received in reply:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 9, 1882.

SIR: Complying with the direction for report contained in the reference dated 1st instant of the Assistant Secretary of a letter to you dated 31st ultimo from Hon. George C. Hazelton of Committee on Private Land Claims, House of Representatives, inclosing H. R. 3149, entitled "A bill to provide for ascertaining and settling private land claims in certain States and Territories," and making certain inquiries in connection therewith, I have the honor to state that the total number of claims, including pueblos, reported to Congress, by the surveyor-general of New Mexico, under the eighth section of the act of July 22, 1854 (Stats. 10, page 309), is 141
Of this number there have been confirmed by Congress 64
Rejected by the Supreme Court of the United States under fifth section act of June 21, 1860..... 1

Pending in Congress 76

Relative to Colorado and Arizona, would say in reply that under act of February 28, 1861 (Stats. 12, p. 172), the surveyor-general of Colorado has reported one claim, and under act of July 15, 1876 (Stats. 16, p. 304), the surveyor-general of Arizona has reported thirteen claims.

As none of the claims reported by the surveyors-general of Colorado and Arizona have been confirmed, the number pending in Congress is the same as reported, to wit: 14.

From the foregoing it will be observed that the number of claims reported by the surveyor-general of New Mexico is..... 141
Reported by surveyor-general of Colorado..... 1
Reported by surveyor-general of Arizona..... 13

Making a total of claims reported..... 155
Of this number there have been confirmed by Congress..... 64
Rejected by the Supreme Court of United States under 5th act June 21, 1860.. 1

Total pending in Congress..... 90

Of the 90 claims pending in Congress as aforesaid, three were rejected by the surveyor-general of New Mexico, and two were rejected by the surveyor-general of Arizona, and the case of the Una de Gato, originally recommended for confirmation, was, upon reinvestigation, subsequently reported as fraudulent.

It may be proper to state in this connection that in the claim of Gervacio Nolan, numbered 39, and that of Jose Sutton, numbered 45, both in the Territory of New Mex-

ico, adverse reports were made by the proper committee of Congress. These claims are also included in the number pending as aforesaid.

In response to the second clause of the second question in Mr. Hazelton's letter, I enclose herewith a copy of office letter dated January 9, 1878, to the honorable Secretary of the Interior. This letter estimates the total number of grants in New Mexico to be 1,014. I find upon examination of the report of the surveyor-general of New Mexico of August 22, 1881, that up to that time only 190 claims, including pueblos, had been filed with him, and deducting the 141 which had then been reported by him, would leave 49 still pending in his office and 824 claims yet to be filed with him, assuming that none have been filed since that date.

While I have no means of determining the accuracy of the statement contained in said letter as to the probable number of grants in New Mexico, which may or may not be overestimated, yet I concluded to transmit a copy of the same, and the information upon that point may be accepted for what it is worth.

From the most reliable information in the possession of this office, it is believed that the number of claims to be reported by the surveyor-general of Arizona will not exceed 11. All the claims pending in Congress, with the exception of about 12, have been surveyed, and the preliminary surveys are found, upon examination, to cover an area of about 5,500,000 acres.

This office is not advised of the existence of any private land claims in the State of Nevada nor in the Territory of Utah. Mr. Hazelton's letter and inclosure are herewith returned.

I am, sir, very respectfully, your obedient servant,

N. C. McFARLAND,
Commissioner.

Hon. H. M. TELLER,
Secretary of the Interior.

This bill is in substance the same as the one referred to by Commissioner Williamson in his foregoing letter of January 29, 1878, and which had the sanction of the Interior Department.

Your committee therefore report back the accompanying substitute for H. R. 3149, and recommend the passage thereof.

H. Rep. 1733——2

OCCUPYING CLAIMANTS IN DISTRICT OF COLUMBIA.

JULY 26, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. NEAL, from the Committee on the District of Columbia, submitted
the following

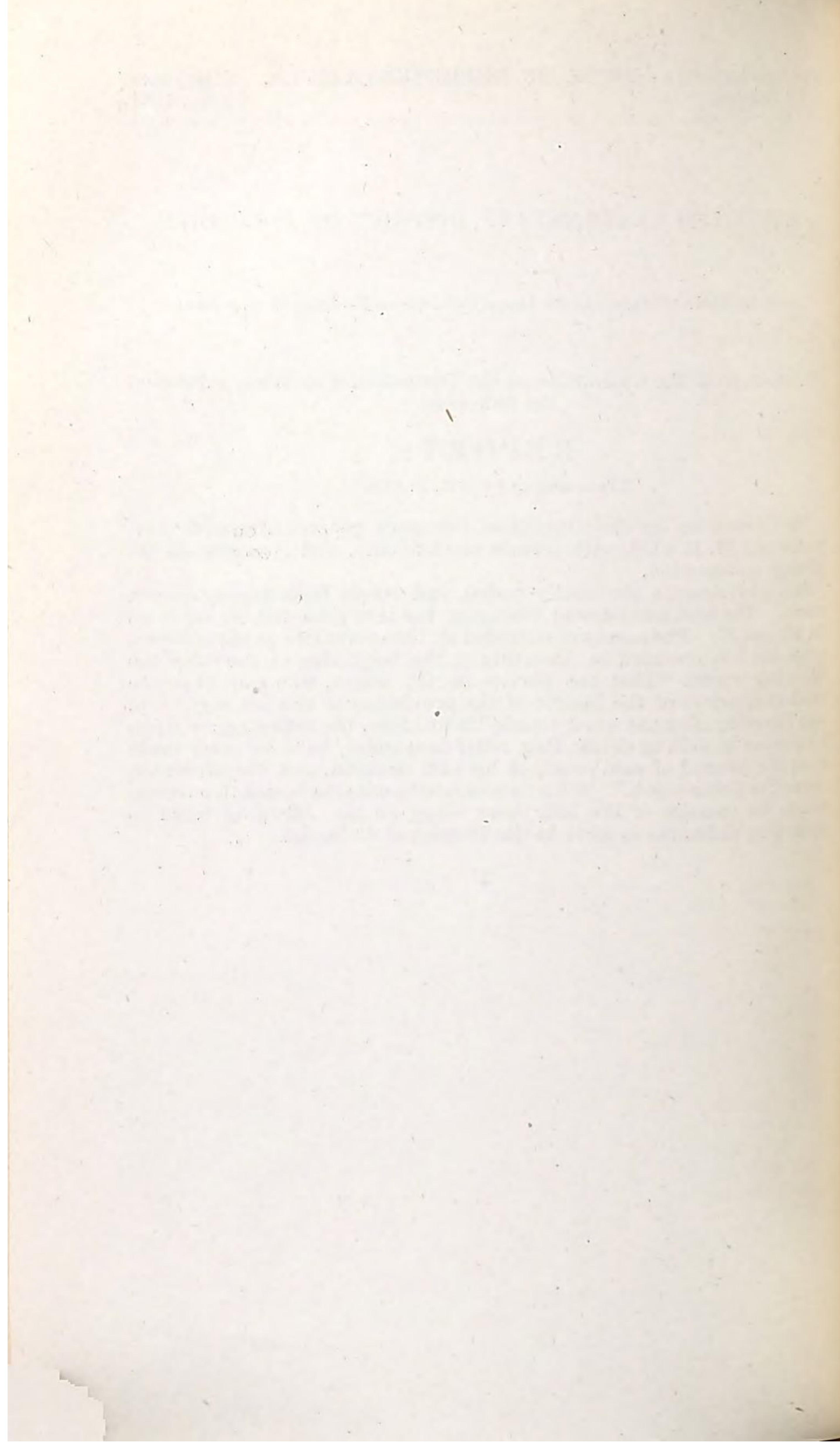
REPORT:

[To accompany bill H. R. 6156.]

The Committee on the District of Columbia reports from said committee bill H. R. 6156, with certain amendments, and recommends its passage as amended.

Said amendments are mostly verbal, and result from typographical errors. The first amendment changing the text is in striking out lines 35, 36, and 37. The same are regarded by the committee as superfluous.

Section 3 is amended by inserting at the beginning of the same the following words: "That the parties in any action, who may desire to avail themselves of the benefit of the provisions of this act may," and also inserting after the word "made" in line four, the following: "Upon his motion in writing demanding relief hereunder, have an entry made upon the journal of said court, of his said demand, and the allowance thereof, and thereupon." With these amendments the committee recommends the passage of the bill, there being no law affording relief to occupying claimants in force in the District of Columbia.



SETTLEMENT OF ACCOUNTS WITH THE MOBILE AND OHIO RAILROAD COMPANY.

JULY 26, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HUTCHINS, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. Res. 191.]

The Committee on Claims, to whom was referred the joint resolution (H. Res. 191) to provide for the settlement of accounts with the Mobile and Ohio Railroad Company, respectfully report:

That by act of February 27, 1875, to provide for settlements with certain railway companies, the Secretary of War and Attorney-General were authorized and empowered jointly to adjust and settle the claims of the United States against the Mobile and Ohio and other railway companies named therein, for property purchased by them of the United States in the years 1865 and 1866.

The Secretary of War reported to Congress (see Senate Ex. Doc. No. 57, Forty-fourth Congress, first session) that, under the provisions of the act cited, he had made settlement with certain of the companies, but had been unable to make any settlement of the accounts of the Mobile and Ohio Company for the reason that a settlement on the basis determined on as equitable and just, and on which settlement had been made with the other companies, would bring the government in debt to that company, and the law had made no provision for paying any balance.

It was of course the intention of the law that the companies named in it should receive its benefits. The Secretary of War reports that he found it equitable and just to settle the accounts of all the companies by making a deduction of 25 per cent. in the valuation of the property charged against them. Applying this settlement to the Mobile and Ohio Company, it was found that they had overpaid their accounts. The committee find no reason why this should deprive the company of a settlement on the same basis as the other companies.

The purpose of the resolution is to direct the settlement to be carried out with the Mobile and Ohio Company. The committee consider it equitable and just that this should be done, and accordingly report back the resolution with the recommendation that it be passed.

DUTY ON HAY.

JULY 27, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. KASSON, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 6809.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 6809) to adjust the duty on hay, report the same back, with the recommendation that the same do pass.

Under section 2516 of the Revised Statutes, which provides that there shall be levied a duty of 10 per cent. ad valorem on all raw or unmanufactured articles not enumerated in the tariff schedules, and 20 per cent. on all manufactured articles, when imported into the United States, the Treasury Department, by a decision of April 8, 1868, held that hay was a manufactured article, and as such subject to an import duty of 20 per cent. This rate of duty was imposed and collected on hay without question from that date until the 23d of March, 1882, when the Secretary of the Treasury issued a circular stating that the United States circuit court for the northern district of New York, in the case *Frazee et al. vs. Moffitt*, had decided that hay is an unmanufactured article, and, as such, subject to a duty of only 10 per cent.; and that by the advice of the Attorney-General the department had acquiesced in the ruling, and therefore instructed officers of customs to thereafter impose a duty of only 10 per cent. on hay imported from Canada or elsewhere.

It was obviously the intention of the customs laws to impose the same duty on imported hay as on imported timber and wood, animals, wheat, oats, and other agricultural products, which averages 20 per cent. This was regarded as only a just and proper protection to the farmers of the States bordering on Canada, and of the States which could be easily reached by vessels from Nova Scotia and New Brunswick. To suddenly reduce the tariff on so important an agricultural product as hay, while all other duties remain the same, is regarded as an improper discrimination. It can be regarded only as simple justice to promptly correct the effect of this judicial decision which changes the habitual construction of a statute. And it is all the more important that this correction should be made at once, otherwise it will subject the farmers of a large number of States to the injurious competition of the Canadian hay crop which will soon be harvested.

Your committee therefore report back the accompanying bill with a favorable recommendation.

The communications of the Treasury Department on the subject are made part of this report.

TREASURY DEPARTMENT, *July 26, 1882.*

SIR: In reply to your letter of this date, you are informed that there is no provision in the statute for hay. For years it was classified under section 2516 of the Revised Statutes as a non-enumerated manufactured article, dutiable at 20 per cent. ad valorem, but on trial of a case, a few months since, which involved the question, it was decided that hay was not to be classified as a manufactured article, but was dutiable at 10 per cent. under the same section as an unmanufactured article.

This ruling has been acquiesced in by this department. See copy of circular inclosed.

Very respectfully,

CHAS. J. FOLGER,
Secretary.

Hon. NELSON DINGLEY, Jr.,
House of Representatives.

[1882. Department, No. 32. Secretary's Office.]

[Circular.]

Duties on hay.

TREASURY DEPARTMENT,
Washington, D. C., March 23, 1882.

To Collectors of Customs and others :

By decision of this department, dated April 8, 1868 (Synopsis 82), it was held that hay imported into the United States was to be classified as a non-enumerated manufactured article, dutiable at the rate of 20 per cent. ad valorem.

The United States circuit court for the northern district of New York, in the case of *Frazee et al. vs. Moffitt*, has decided that hay is dutiable only at 10 per cent. ad valorem, as a non-enumerated unmanufactured article, under section 2516 of the Revised Statutes, and the Attorney-General has advised an acquiescence in such ruling.

I yield to this opinion, and officers of the customs will govern their actions accordingly.

When duties on hay have been exacted in excess of 10 per cent. ad valorem, and the parties in interest have taken the proper steps under section 2931, Revised Statutes, to preserve their rights to a return of the excess of duties exacted, certified statements in the usual form for a return of such excess will be forwarded to the department.

CHAS. J. FOLGER,
Secretary.

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TO EMPOWER POSTMASTERS TO ADMINISTER OATHS TO
IMPORTERS OF BOOKS.

JULY 27, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. KELLEY, from the Committee on Ways and Means, submitted the
following

R E P O R T :

[To accompany bill H. R. 6842.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 6842) to empower postmasters to administer oaths to importers of books, submit the following report:

The necessity for the passage of this bill will be seen from the following extract from a communication addressed to the Speaker of the House of Representatives by the Secretary of the Treasury, and to be found in House Ex. Doc. No. 165 of the present session:

Considerable difficulty and delay is experienced in regard to the importation through the mail of books not liable to duty, either for the reason that they are specially exempted from the operation of the tariff by the provisions of the free list, or that they are imported for institutions established for philosophical, literary, or religious purposes, or for the encouragement of the fine arts, or for the use or by the order of a college, academy, school, or seminary of learning. The difficulty is caused to a considerable extent by the fact that affidavits must be forwarded under existing regulations to customs officers at the port where the books were originally imported, and whence they were forwarded to the postmaster at the place of destination; and that postmasters are not empowered by law to administer the oaths. I therefore suggest the passage of a bill empowering postmasters to administer oaths, for custom-house purposes, to persons importing books through the mail.

CERTAIN LANDS IN DALLAS COUNTY, IOWA.

JULY 27, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. KASSON, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 6609.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 6609) to authorize the sale of certain lands in Dallas County, Iowa, devised to the United States by the last will and testament of John Gardner, deceased, submit the following report:

The accompanying bill authorizes the Secretary of the Treasury to sell a certain tract of land in the State of Iowa, and directs that the proceeds thereof be covered into the United States Treasury. The tract of land described in the bill is known as the "Gardner Farm," and is located in close proximity to the town of Redfield, Dallas County. It consists of lots 9, 10, 15, and 16, in section 4, township 78, range 29, west fifth principal meridian, Iowa. The tract was devised to the United States by John Gardner, deceased. It is not needed for public use, and so long as it continues public property seriously interferes with the growth and improvement of the town of Redfield. A petition numerously signed by citizens of Redfield asks that the tract of land may be sold at public sale in order that the obstacle to the growth of that town may be removed. Your committee believe that public and private interests would be best subserved by the sale of the land, and therefore recommend the passage of the bill.

CONDEMNED CANNON FOR MONUMENTAL PURPOSES.

JULY 28, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BAYNE, from the Committee on Military Affairs, submitted the following

R E P O R T:

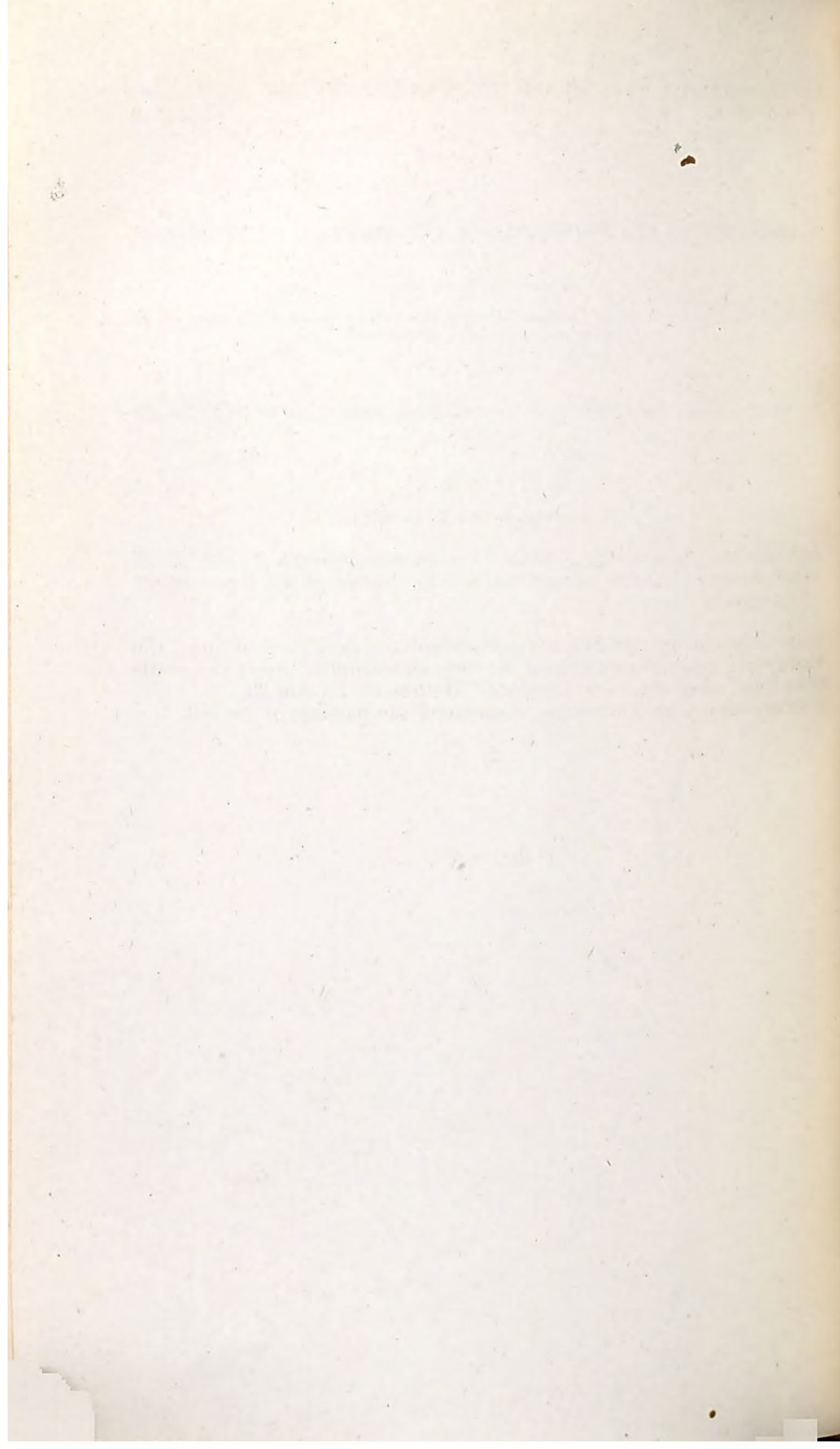
[To accompany bill H. R. 6818.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 6818) donating condemned cannon, having considered the same, respectfully report:

They recommend the following amendments: Strike out of line 7 the words "and others," and amend the title accordingly; insert the words "cast iron" after the word "pounds," in lines 11, 17, and 23.

So amended, your committee recommend the passage of the bill.





CONDEMNED CANNON FOR UTICA, N. Y.

JULY 28, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BAYNE, from the Committee on Military Affairs, submitted the following

R E P O R T:

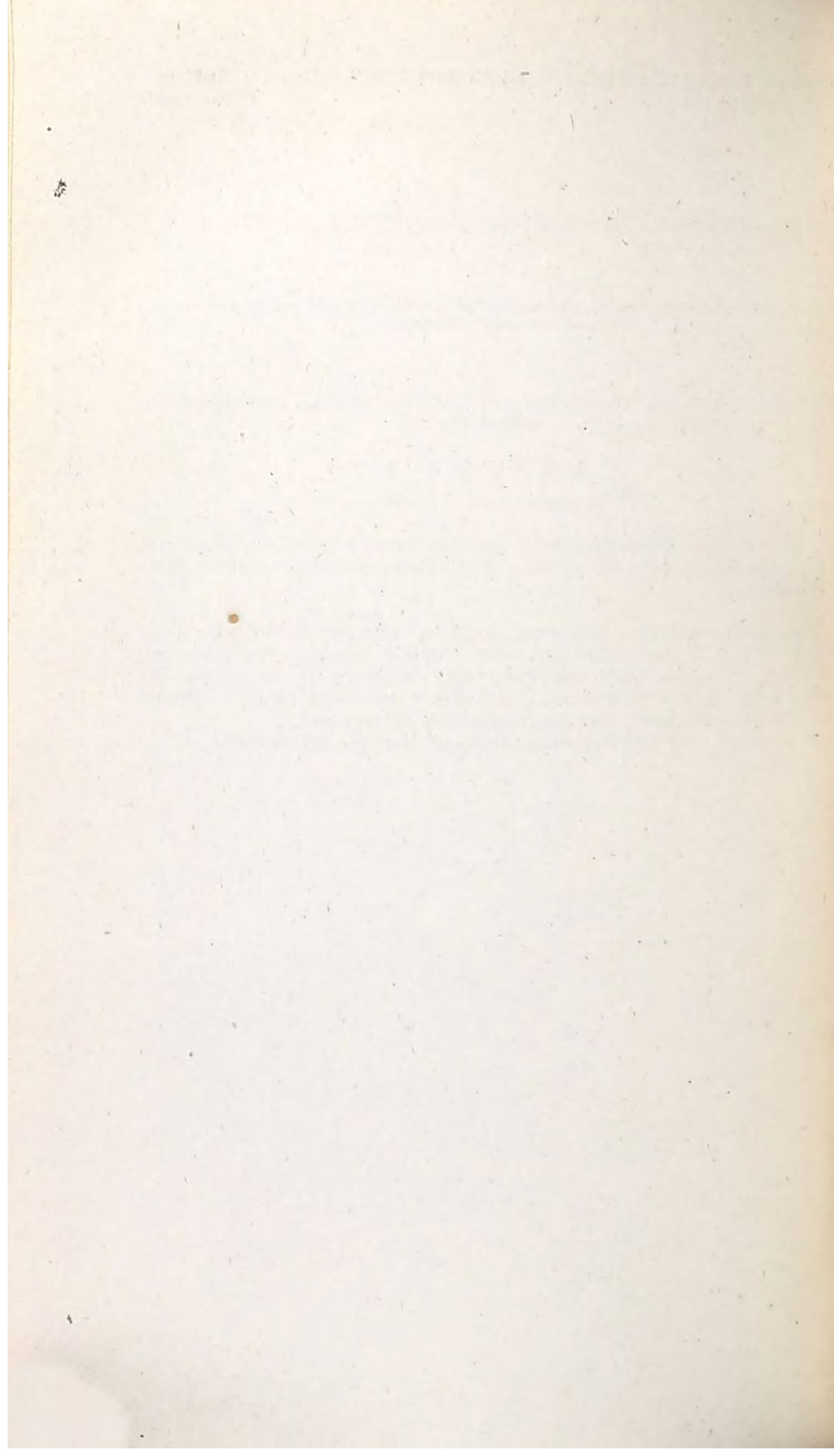
[To accompany bill H. R. 6815.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 6815) donating condemned cannon, having considered the same, respectfully report:

They recommend the following amendments: Strike out the word "eight" in line 5, and insert the word "four". Insert, after the word "condemned," in the same line, the words "cast iron". Strike out the word "such," in line numbered 7, and insert the word "four". Strike out, in line numbered 8, the words "as may be required."

So amended, your committee recommend that the bill do pass.





CONDEMNED CANNON FOR ALLEGHENY COUNTY, PENN-
SYLVANIA.

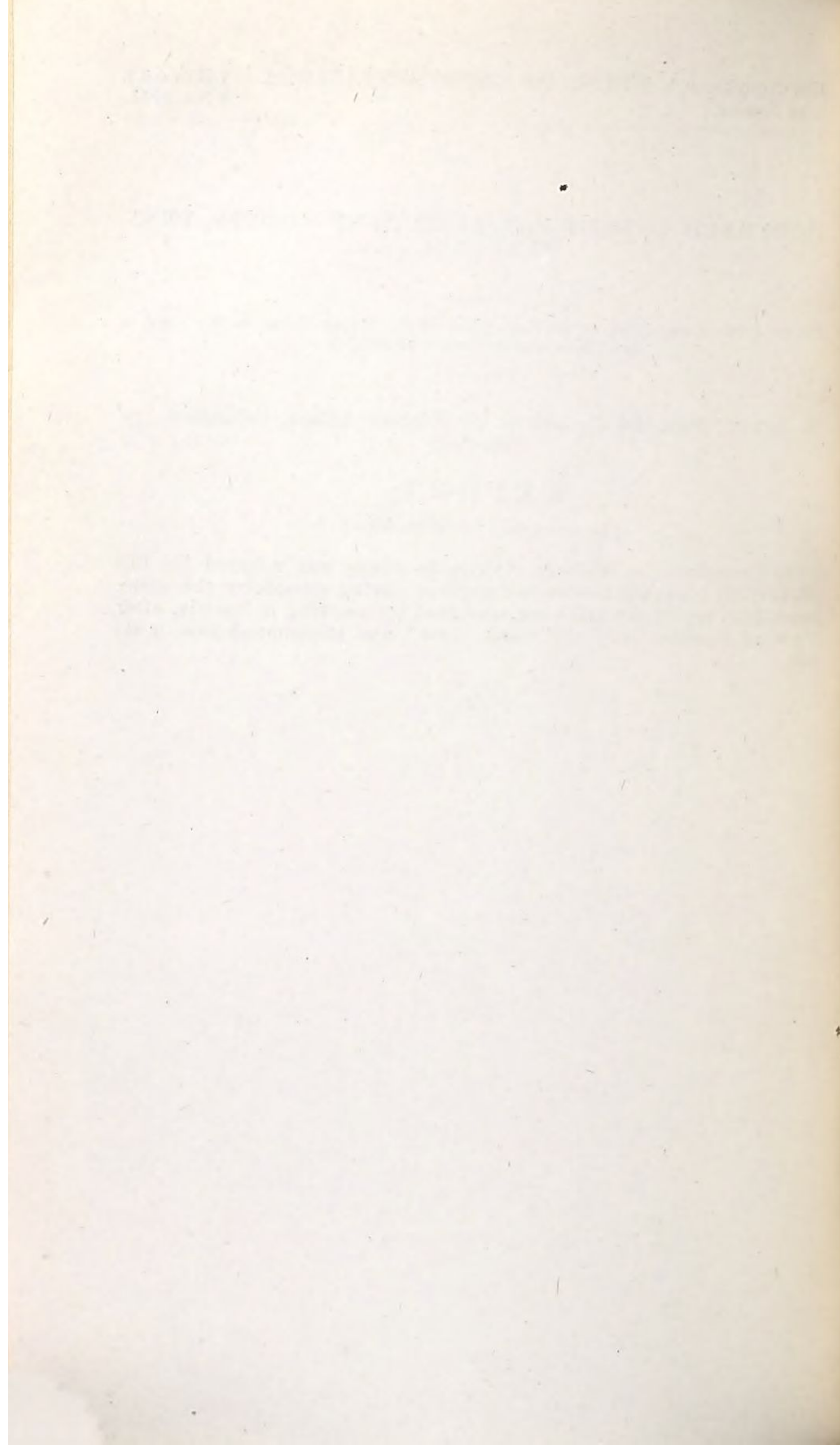
JULY 28, 1882.—Committed to the Committee of the Whole House on the state of
the Union and ordered to be printed.

Mr. BAYNE, from the Committee on Military Affairs, submitted the
following

R E P O R T:

[To accompany bill H. R. 6821.]

The Committee on Military Affairs, to whom was referred the bill
(H. R. 6821) donating condemned cannon, having considered the same,
respectfully report the bill back, amended by inserting in line six, after
the word "condemned," the word "cast," and recommend that it do
pass.



CONDEMNED CANNON FOR MYSTIC, CONN.

JULY 28, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BAYNE, from the Committee on Military Affairs, submitted the following

R E P O R T :

[To accompany bill H. R. 6826.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 6826) donating condemned cannon and balls, having considered the same, respectfully report the bill back to the House without amendment, and recommend its passage.

○

CONDEMNED CANNON FOR SLATERVILLE, N. Y.

JULY 28, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BAYNE, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6817.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 6817) donating condemned cannon, having considered the same, respectfully report the bill back to the House without amendment, and recommend its passage.

○

CONDEMNED CANNON FOR PICKAWAY COUNTY, OHIO.

JULY 28, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BAYNE, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6829.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 6829) donating condemned cannon, having considered the same, respectfully report the bill back to the House without amendment, and recommend its passage.

○

REPORTS ON ZOOLOGY.

JULY 28, 1882.—Laid on the table and ordered to be printed.

Mr. VAN HORN, from the Committee on Printing, submitted the following

REPORT:

[To accompany H. Res. 2.]

The Committee on Printing, to whom was referred the joint resolution (H. Res. 2) to provide for the printing of 5,000 copies of the reports on zoology, have had the same under consideration, and are unanimously of the opinion that it is unwise to reprint documents unless there is some important reason for such reprint.

The reports on zoology were printed some years ago, and as subsequent reports are to be printed, embracing such subjects in a new form, and will contain corrected information on the subject, and as new matter and information are coming up for publication, it is the judgment of your committee that the money required to reprint the publications contemplated by the resolution would be better expended in forthcoming reports. The committee report the said joint resolution back to the House with the recommendation that it be laid on the table.

“LAMPHERE’S UNITED STATES GOVERNMENT.”

JULY 28, 1882.—Laid on the table and ordered to be printed.

Mr. VAN HORN, from the Committee on Printing, submitted the following

R E P O R T :

[To accompany H. Res. 53.]

The Committee on Printing, to whom was referred the joint resolution (H. Res. 53) to provide for the printing or purchase of ——— copies of the work entitled “Lamphere’s United States Government,” have had the same under consideration, and report it back to the House with the recommendation that said joint resolution be laid on the table. The remonstrance of W. H. & O. H. Morrison against said joint resolution is reported back to the House.

FLORA OF COLORADO.

JULY 28, 1882.—Laid on the table and ordered to be printed.

Mr. VAN HORN, from the Committee on Printing, submitted the following

REPORT:

[To accompany H. Res. 3.]

The Committee on Printing, to whom was referred the joint resolution (H. Res. 3) to provide for the printing of 5,000 copies of the Flora of Colorado, have had the same under consideration, and are unanimously of the opinion that it is unwise to reprint documents unless there is some important reason for such reprint. The Flora of Colorado was printed some years ago, and as subsequent reports are to be printed embracing such subjects in a new form, and will contain corrected information on the subject, and that, or new matter and information is coming up for publication, it is the judgment of your committee that the money required to reprint the Flora of Colorado would be better expended in forthcoming reports.

The committee report the said joint resolution back to the House, with the recommendation that it be laid on the table.

MEMORIAL ADDRESS OF JAMES G. BLAINE.

JULY 28, 1882.—Laid on the table and ordered to be printed.

Mr. VAN HORN, from the Committee on Printing, submitted the following

REPORT:

[To accompany H. Res. 157.]

The Committee on Printing, to whom was referred the joint resolution (H. Res. 157) for the printing of 100,000 copies of the address of the Hon. James G. Blaine in honor of the memory of James Abram Garfield, late President of the United States, have had the same under consideration, and, in view of the fact that the House has already passed a joint resolution ordering the printing of 25,000 copies of the same memorial address, with the portrait of the late President attached to the same, beg leave to report this joint resolution back to the House with the recommendation that it be laid on the table.



REPORT OF MEDICAL EXPERTS.

JULY 28, 1882.—Laid on the table and ordered to be printed.

Mr. VAN HORN, from the Committee on Printing, submitted the following

REPORT:

[To accompany H. Res. 168.]

The Committee on Printing, to whom was referred the joint resolution (H. Res. 168) to print the report of the board of medical experts, and appropriating money therefor, have had the same under consideration, and beg leave to report it back to the House with the recommendation that it do not pass.

○

HELPER'S "THE THREE AMERICAS RAILWAY."

JULY 28, 1882.--Laid on the table and ordered to be printed.

Mr. VAN HORN, from the Committee on Printing, submitted the following

R E P O R T:

The Committee on Printing, to whom was referred concurrent resolution to provide for the republication of 150,000 copies of Helper's "The Three Americas Railway," have had under consideration and beg leave to report the same back to the House with the recommendation that it be laid on the table.



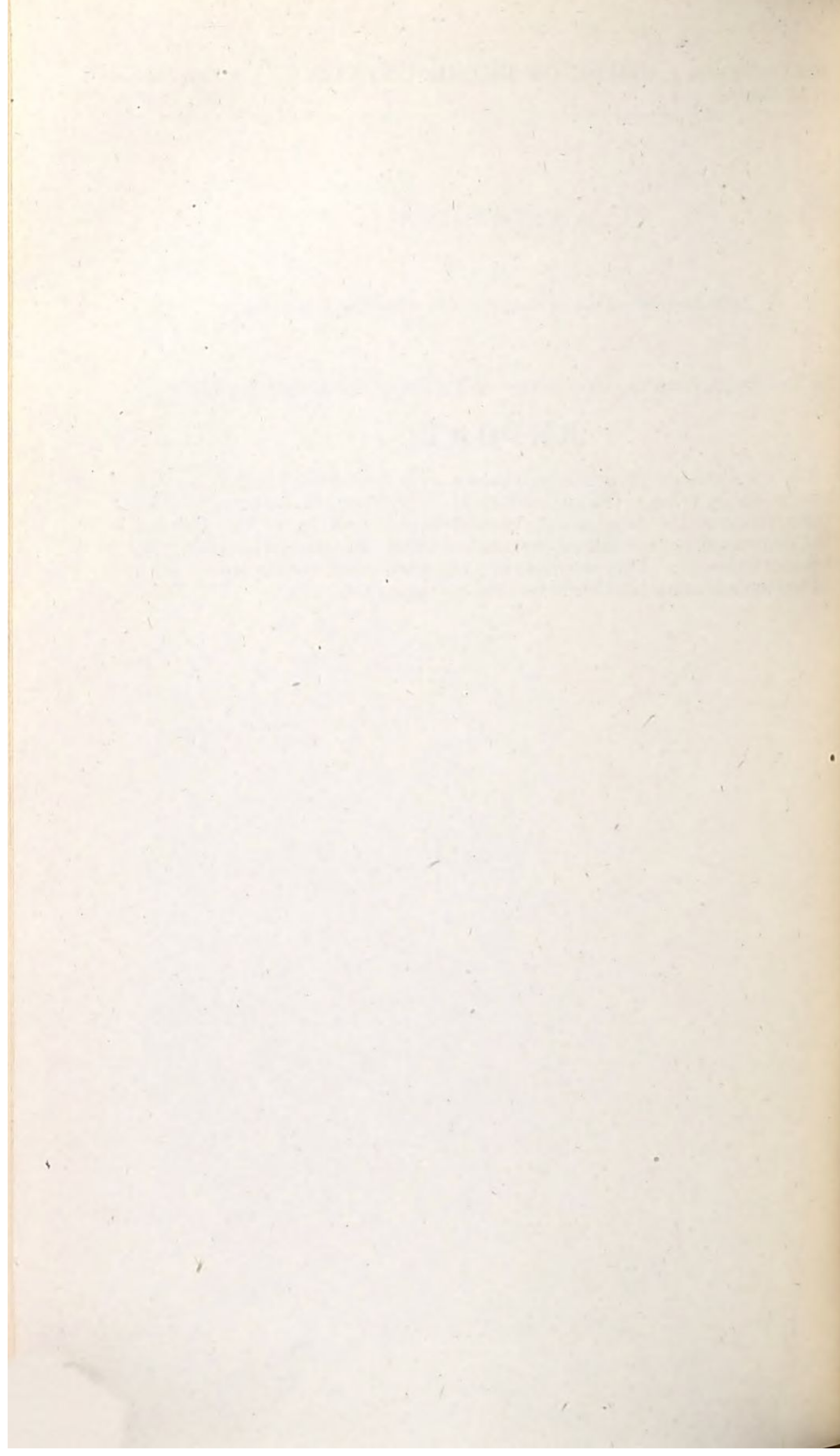
A FREE PAPER.

JULY 28, 1882.—Laid on the table and ordered to be printed.

Mr. VAN HORN, from the Committee on Printing, submitted the following

REPORT:

The Committee on Printing, to whom were referred the petitions of certain citizens of Otsego County, State of New York, in favor of a free paper, have had the same under consideration, and are of the opinion that the proposition contained therein is unwise, unnecessary, expensive, and impracticable. The petitions are reported back to the House with the recommendation that they be laid on the table.



TO FIX THE PAY OF THE PRINTERS AND BOOKBINDERS IN
THE GOVERNMENT PRINTING OFFICE.

JULY 28, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. VAN HORN, from the Committee on Printing, submitted the following

R E P O R T :

[To accompany bill H. R. 6844.]

The Committee on Printing, to whom was referred the bill (H. R. 3254) to fix the pay of printers and bookbinders in the Government Printing Office, and repealing all laws in conflict therewith, have had under consideration, and beg leave to report the same back to the House with the accompanying substitute, and recommend its passage.

○

THE FLAGS OF MARITIME NATIONS.

JULY 28, 1882.—Ordered to be printed.

Mr. VAN HORN, from the Committee on Printing, submitted the following

REPORT:

The Committee on Printing, to whom was referred Senate concurrent resolution to print 3,000 copies of the "Flags of Maritime Nations," have had the same under consideration, and respectfully report the same back to the House, with the recommendation that it do pass.

○

MINNIE LYLES.

JULY 28, 1882.—Referred to the Committee on Appropriations and ordered to be printed.

Mr. URNER, from the Committee on Accounts, submitted the following

R E P O R T:

The Committee on Accounts, to whom was referred the accompanying resolution for the relief of Minnie Lyles, widow of Alfred Lyles, deceased, late an employé of this House, having considered the same, beg leave to report as follows:

It appears that said Alfred Lyles was employed in the folding-room of the House of Representatives during the Forty-sixth Congress, and died in the month of June, 1880, while his name was borne upon the rolls as an employé of the House. It seems to have been customary to allow the widows of deceased employés a portion of the salary and the funeral expenses of the deceased. The committee, however, do not feel warranted in reporting that this allowance, viz, three months' pay, amounting to \$100, and the funeral expenses, amounting to \$73, be paid out of the contingent fund of the present Congress. The committee therefore report the resolution, with accompanying papers, back to the House, and recommend that the same be referred to the Committee on Appropriations, with the request that they make provision for the payment of said sums, amounting to \$173, in an appropriation bill.

SEWELL COULSON, AND PORTER, HARRISON & FISHBACK.

JULY 28, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PEELE, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 4431.]

The Committee on Claims, to whom was referred the bill (H. R. 4431) for the payment of Sewell Coulson, and Porter, Harrison & Fishback, for legal services, having had the same under consideration, have carefully examined all the papers and evidence connected therewith, and find the facts substantially as stated in a letter of Mr. Coulson, which is in part as follows:

About the 1st of October, 1864, Samuel McCormick, of Sullivan County, Indiana, was captain of a company of State militia, organized and mustered in his county, under and in pursuance of the act of the State legislature approved and signed May 11, 1861. Bedee Johnson, John McConnel, John Rotramel, John G. Kimberlain, Thomas Wells, Peter Wilson and others, were members of said company. This company was frequently called into active service by the provost-marshal of the district, to aid in enforcing the laws of the United States, and in preventing opposition to the drafts or uprising of the people to resist the drafts.

In February, 1866, five civil suits were commenced against Captain McCormick and his men, in the Sullivan circuit court, to recover damages for false imprisonment in cases where they had made arrests under and in pursuance to orders from General A. P. Hovey, in command of the district of Indiana, R. W. Thompson, captain and provost marshal, and Daniel Conover, captain and provost-marshal, both of the seventh Congressional district of Indiana, accompanied by orders from Maj. Gen. James Hughs, in command of the State militia.

At the same term of the Sullivan circuit court, the grand jury returned an indictment against the same men, charging them with grand larceny for seizing two kegs of powder found concealed, and which were undoubtedly procured and intended to be used in opposing the Government of the United States. I was employed as counsel to defend all of these six cases, to wit: Andrew Humphreys *vs.* Samuel McCormick *et al.*; Thomas Mayfield *vs.* Same; James Leach *vs.* Same; William Holson *vs.* Same; John Sisson *vs.* Same; and the State of Indiana *vs.* Same. On entering their first appearance in the civil cases, the defendants filed their affidavits and motions with an offer to make requisite bonds to remove said cases to the circuit court of the United States for the district of Indiana for trial. The motions were severally overruled by Judge Eckles, he holding the act of Congress of 3d of March, 1863, unconstitutional and void, and ruled the defendants to answer, pending which, all the cases were continued. At the August term, 1866, judgment was taken by default in the case of Humphreys *vs.* McCormick *et al.* and his damages assessed at \$25,000. Issues were formed in all the other cases, and the cases of Mayfield *vs.* McCormick *et al.* was tried by the court, which resulted in finding a judgement for plaintiff for \$500. These two cases defendants appealed to the supreme court; in the other three, on defendant's application, the venue was changed to the Knox circuit court. The indictment in the criminal case was quashed.

After the appeal of the cases of Humphreys and Mayfield to the supreme court Messrs. Porter, Harrison & Fishback of Indianapolis, were retained to assist in those cases, and did so. They filed a brief that required great labor, learning, and research to prepare, the cases involving new questions, not then fully adjudicated.

These cases were decided at the November term, 1866, of the supreme court, by which decision the judgment and ruling of the Sullivan circuit court was reversed,

and the cause remanded, with instructions to the court below to pass upon the sufficiency of the bond that might be offered under the law of Congress, &c. (See cases, *Mayfield against McCormick et al.*, 27 Indiana, 143, and *McCormick et al. vs. Humphreys*, 27 Indiana, 144, where a more detailed statement will be found.)

Immediately after the decision of the above cases in the supreme court, Judge Baker, of the Knox circuit, ordered the three cases pending in his court by change of venue to be removed to the United States circuit court for the district of Indiana for trial, which was done, and the cases were finally disposed of in that court at the November term, 1867, in favor of the defendants.

The cases of Humphrey and Mayfield were transferred to the United States circuit court at the May term thereof, 1868, and leave was given to plead at the November term following.

* * * * *

The claims for these services were filed with the Secretary of War, and the same were by him referred to the Judge Advocate General. Although the facts found by him are substantially as stated above, your committee think it fair to the House to give the facts as found by him, together with his conclusions thereon, which are in these words:

WAR DEPARTMENT, BUREAU OF MILITARY JUSTICE,
May 10, 1875.

Respectfully returned to the Secretary of War.

This is the claim of Sewell Coulson, esq., and of Messrs. Porter, Harrison & Fishback, attorneys, for their fees for professional services rendered in the defense of sundry actions instituted and prosecuted against a militia officer and men of his command, in the State courts and the United States circuit court, within the State of Indiana.

Mr. Coulson's account amounts to \$4,500, less a credit of \$550—that is to say \$3,950. The account of Porter, &c., is \$3,000, less \$500, or \$2,500. Total, \$6,500.

The credits indicated were amounts paid out of a fund appropriated by the State of Indiana for the indemnification of officers and soldiers of the United States and of the State militia, who had been exposed to suits, &c., by reason of their military acts. In regard to this fund, Governor Baker certifies in his statement, dated April 1, 1870, and contained among the papers, that—"The appropriation was wholly insufficient to pay reasonable attorney's fees for the defense of all such suits as were brought. * * * The services rendered by Captain Coulson and Messrs. Porter, Harrison & Fishback were not by any means compensated by the sums which they respectively received, nor was it so considered."

The present claims are accompanied by an extended statement by Mr. Coulson, setting forth the facts of the inception and history of the proceedings.

The actions, which were all commenced in February, 1866, were six in number—five being civil suits for damages, and one a criminal prosecution for larceny.

The civil suits were severally instituted by Andrew Humphreys (apprehended and brought to trial by military commission with Milligan and others, for treasonable conspiracy, &c.), who claimed \$50,000 for false arrest and imprisonment by Thomas Mayfield, on account of the seizure from him of arms and ammunition found concealed in his possession with a supposed treasonable purpose; by John Sisson, for an alleged assault and battery and false imprisonment, growing out of the case of Mayfield; by James Leach, for false arrest and imprisonment as a member of the "Sons of Liberty" (a secret traitorous association in aid of the Southern rebellion), charged with resisting the draft; and by William Holdson, whose alleged ground of action was identical with that of Leach. The criminal indictment was in the name of the State of Indiana, and for the *larceny* of the property of Mayfield, above mentioned. The defendants in each case were Samuel McCormick, a captain of State militia (or of the "Indiana Legion," as it is styled), and certain members of his company, from five to thirteen in number. The order for the arrest of Humphreys was given by Brig. Gen. A. P. Hovey, United States Volunteers, commanding district of Indiana, and was addressed to Capt. John W. Day, First Heavy Artillery, Indiana Volunteers, who was directed to make the arrest "with the force turned over to him for that purpose, by Maj. Gen. Jas. Hughes," commanding Indiana Legion; Captain McCormick being thereupon ordered by General Hughes to report with certain of his company to Captain Day.

For the arrest of Mayfield and the seizure of his property, by McCormick, the order was given by the United States provost-marshal of the seventh district of Indiana.

For the apprehension of Sisson no order of arrest was ever made. It is represented in the statement of Mr. Coulson that he was never arrested at all, nor in any manner assaulted, &c., as claimed by him in his action.

For the arrest of Leach and Holdson by McCormick the order was given by Capt. W. W. Jones, Twenty-second Regiment Veteran Reserve Corps, placed by General Hovey in command of the United States troops in the county of Sullivan, a detachment having been stationed there for the protection of loyal citizens.

Under what specific authority or circumstances the State militia had come to be under the orders of the district commander and provost-marshals at the period of these arrests, &c., is not set forth in Mr. Coulson's statement.

The five actions were commenced in State courts, and subsequently removed to the circuit court of the United States, where they were finally disposed of without trial. In the suits by Humphreys and Mayfield, on application having been made and enforced by argument for the removal of the cases to the United States jurisdiction, the same was refused by Judge Eckles, who held the State court, whereupon both suits went to trial, and a verdict or judgment (in the former action of \$25,000 and in the latter of \$500), was rendered against the defendant. These cases were then appealed to the supreme court of the State; where, after an elaborate argument, the adverse ruling of the court below was reversed and the removal of the suits ordered. The other actions, which had meanwhile awaited this result, were also then removed. Complaints and answers were thereupon filed in the two first-named suits in the United States court, and after some continuance the same were, as above mentioned, finally dismissed for want of prosecution in November term, 1870. The suits brought by Sisson, Leach, and Holdson were dismissed in May term, 1868, for want of a declaration. The criminal indictment was quashed in or about August, 1866.

Mr. Coulson is understood to have acted as attorney from the beginning to the end of the proceedings. The services of Messrs. Porter, Harrison & Fishback were rendered in the supreme court upon the appeal, and afterwards in the United States circuit court.

The proceedings in the action by Mayfield were substantially identical with those in the action by Humphreys, and those in the actions by Leach & Holdson substantially identical with those in the action brought by Sisson.

The performance of the services and reasonableness of the charges are certified to by Judge Eckles of the State circuit court, by Judges Frazer and Ray of the supreme court of the State, before which the appeal in the two principal actions was argued by Governor Baker and by Hon. T. A. Hendricks, John C. New, J. T. Gunn, N. G. Buff, and J. E. McDonald, attorneys and counsellors-at-law of Indiana.

No specific authority from the Secretary of War for the employment, at the expense of the United States, of Mr. Coulson or of Messrs. Porter, Harrison & Fishback, in any of these proceedings, is to be found in the papers exhibited.

If, however, the communication of the Secretary of War, of February 22, 1869, to Hon. H. D. Washburn, M. C., in which the Secretary merely declines to consider the question of compensation till the services are fully performed, and upon the rendition of a final account, is to be viewed as a ratification of such employment, the Secretary would then be authorized to settle these claims, inasmuch as the services were entered upon more than four years before the passage of the act transferring the authority to employ such counsel to the Department of Justice, and were indeed almost entirely concluded before the date of such act. Should the Secretary of War regard himself as fully authorized to entertain the settlement of the charges, it would be the opinion of this bureau that, in view of the difficulty of these cases, the variety of services required in the same during the six years in which they were pending, the successful result of the contest, and of the testimony, above indicated, of the judges and counsel, in favor of the reasonableness of the fees charged, the Secretary would probably be justified in allowing the full amount claimed, although the same certainly appears to this bureau as a full and generous estimate of the value of the services rendered.

If, on the other hand, in view of the fact that no specific engagement of these counsel on the part of the United States, or authority for their employment at its expense, appears among the papers or is even claimed by the parties to have existed; of the fact that the defendants were state militia and not a part of the Army of the United States; of the fact that a provision, inadequate though it may have been, was made for the fees of this class of counsel by the legislature of Indiana, and that their share of it was accepted by claimants, who thus apparently contemplated that their fees were most properly a State charge; and of the further consideration that the payment by the War Department of so considerable an amount as that claimed (at a date when such payments have entirely passed within the sole discretion of the Department of Justice) could hardly have been contemplated by Congress in making the current appropriation for Army contingencies, as well as of the probability that other claims for professional services in these cases may yet be presented by James C. Denny and R. W. Thompson, esqs, the Secretary of War should doubt as to his authority for satisfying these charges, or as to the expediency of his settling the same, it would be then suggested whether it would not be well to refer this claim, which in this aspect addresses itself rather to the generosity than to the justice of the government, to the next Congress, with a view to a specific appropriation for its payment, if the same be deemed proper.

J. HOLT,
Judge-Advocate-General.

And there being no funds at the disposal of the Secretary of War out of which said claims could be paid, the same were referred to the then Attorney-General with a recommendation for payment, as shown by the following letter of indorsement:

WAR DEPARTMENT, *June 9, 1875.*

Approved.

Inasmuch as there are no funds subject to the control of this department for the payment of such claims, and it being suggested that there are funds subject to the control of the Department of Justice which may properly be applied to such purposes, the papers in this case are respectfully forwarded to the honorable Attorney-General, with recommendation of payment of these claims.

WM. W. BELKNAP,
Secretary of War.

Subsequently, to wit, June 12, 1875, the honorable Attorney-General returned said claims to the Secretary of War with the following statement:

DEPARTMENT OF JUSTICE,
Washington, June 12, 1875.

SIR: I have the honor to acknowledge the receipt of the papers in the case of Sewell Coulson and Messrs. Porter, Harrison & Fishback, relative to their accounts of fees for services in certain cases in said papers named.

I herewith return those papers, and beg to inform you that there is no appropriation over which this department has control, and out of which those accounts can be paid.

Very respectfully, your obedient servant,

EDWARDS PIERREPONT,
Attorney-General.

Hon. W. W. BELKNAP,
Secretary of War.

Afterwards, to wit, November 24, 1876, the Secretary of War referred said claims to the Third Auditor of the Treasury, in the following statement:

Respectfully referred to the Third Auditor of the Treasury for settlement. The account being approved at this department, but no funds being available, it may be a proper case to report to Congress in the estimates.

By order of the Secretary of War.

H. T. CROSBY,
Chief Clerk.

NOVEMBER 24, 1876.

And the said Auditor having examined the claims, did, on the 5th day of August, 1881, render his decision therein in these words:

DECISION BY THIRD AUDITOR.

In the matter of the claims of Sewall Coulson, esq., and Messrs. Porter, Harrison & Fishback for attorney fees.

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,
August 5, 1881.

The general history of these cases is stated in the report made to the Secretary of War by the Judge-Advocate-General, on May 10, 1875, to which I will refer to avoid recapitulation.

The claimants were not employed under any order or other authority emanating from the Secretary of War, nor at any time while the service was being rendered were they recognized by the Secretary as employed in behalf of the United States. The letter addressed by direction of the Secretary to Hon. H. D. Washburn, M. C., by the Inspector-General on the 22d February, 1869, contained no such negotiation, but merely declined to pass upon a case not then pending in the department, but hypothetically presented in a letter, and the full particulars of which were not known at the department.

The parties to whom these professional services were rendered were not in the serv-

ice of the United States, but were officers and soldiers of the State of Indiana. It does not appear by whom these claimants were retained, but it does appear that part payments on account of these services were made and received from a fund provided by the State of Indiana.

If, as appears very probable, the matters in respect to which the services were rendered were of importance to the United States, it may be highly proper for the general government to assume the burden of compensating these claimants; but only Congress can assume for the United States an equitable duty not based upon a legal obligation.

The claims not being within my jurisdiction I cannot entertain them.

The papers will be transmitted, with this decision, to the Second Comptroller.

E. W. KEIGHTLEY,
Auditor.

The decision of the said Auditor was confirmed by the Second Comptroller of the Treasury, in these words:

Claim No. 42,127.

TREASURY DEPARTMENT,
SECOND COMPTROLLER'S OFFICE,
March 10, 1882.

Respectfully returned to the Hon. Third Auditor, the papers in the claim of Sewell Coulson *et al.*

The report of the Auditor is concurred in and approved, and the claim is disallowed.

However meritorious this claim may be, as against the general government, it seems to be clearly one that can now be properly considered only by Congress.

W. W. UPTON,
Comptroller.

Your committee thought best to give the facts pretty fully in this case, even at the risk of repetition. It will be seen that the payment of these claims were recommended by the Secretary of War, and would probably have been paid by him or the Attorney-General but for the want of funds. The claims were rejected by the Third Auditor upon the ground, as stated by him, that "the claimants were not employed under any order or other authority emanating from the Secretary of War." While this may be true, nevertheless the services were rendered, and in the defense of men who were legally ordered to make the arrests and seizures mentioned above. The disturbances in Indiana during the war, and especially at the time of these arrests, are so well known, that your committee deem it unnecessary to make any other than a general reference thereto. The arrests, &c., were made in the interest of the government, and to protect loyal citizens of Indiana. It would have been manifestly unjust to have allowed the defendants in these several suits to have been compelled to pay counsel fees, as their cause was a common one, in which the government was vitally interested, and your committee assume that counsel was necessary to the proper defense of these men. The disposition of all these cases was in favor of the defendants. The value of the services rendered is certified to by the then governor, Conrad Baker, Judge Eckles, who held the State court, by Hon. Joseph E. McDonald, Hon. T. A. Hendricks, by Judges Frazier and Ray, then members of the supreme court of Indiana, and others.

Your committee believe that in view of the circumstances of this case, it is a proper claim to be paid by the government, and they therefore recommend the passage of the bill.

H. Rep. 1755—2

CARRIAGE AND USE AS STORES OF CERTAIN DANGEROUS ARTICLES.

JULY 28, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. TOWNSEND, from the Committee on Commerce, submitted the following

R E P O R T :

[To accompany bill H. R. 6774.]

The Committee on Commerce, to whom was referred the bill (H. R. 6774) to amend section 4472 of the Revised Statutes, relating to the carriage and use as stores of certain dangerous articles, have had the same under consideration, and submit the following report thereon :

The committee having examined the bill H. R. 6774, beg leave to report the same back as amended, and recommend its passage. They find that House bill 6774 is section 22 of House bill 3415, amending section 4472 of the Revised Statutes. The committee have amended the bill by striking out the words "products of petroleum," in line 40, and inserted the words "oils or burning fluids," so that it reads "no oils or burning fluids shall be used on any steam vessel for illuminating purposes that will ignite at a lower temperature than 300 degrees of Fahrenheit." This clause alludes to steam vessels carrying passengers. This bill, as amended, provides for the manner of the shipment of dangerous articles by steam vessels carrying passengers, and also for the kind of oil that shall be used for illuminating purposes. It will be seen that no oil can be used for stores or illuminating purposes on steam vessels carrying passengers, that will ignite at a lower temperature than 300 degrees Fahrenheit.

The necessity for the immediate passage of this law grows out of the knowledge that steamboats carrying passengers on the Potomac and other rivers are using an oil for illuminating purposes that will explode at a fire-test of about 75 degrees, which is a very dangerous oil to be used even on land. This led to an investigation by the Treasury Department, and the issue of a circular in relation to the use of oils for illuminating purposes, and has caused much anxiety in the public mind, as well as uncertainty on the part of steamboat masters and owners, as to what is the real intention of the law and what particular class of oils it permits or prohibits.

This bill is approved by the supervising inspector of steam vessels and the Treasury Department, and the steamboat men as well as the shippers. The provisions in the bill were carefully examined by the Committee on Commerce when considering the steamboat bill, and were approved.

For these reasons we recommend its passage.

The committee add to this report the portion of the report on the

steamboat bill (H. R. 3415) which referred to this particular section of the Revised Statutes, and, as will be seen, have changed the fire-test from 150 degrees Fahrenheit to 300 degrees Fahrenheit. It is as follows:

The section of the statute as it is amended, prescribes specific, safe, and separate regulations for the shipment of each class of dangerous articles. It in no wise increases the danger of navigation, but in many instances insures greater safety in their transportation.

Another amendment allows the shipment as freight and use as stores on steamers carrying passengers refined petroleum which will not ignite at a temperature of less than 150 Fahrenheit thermometer. Refined petroleum that will stand a fire-test of 150° Fahrenheit is, in our opinion, under the restrictions which the law imposes, perfectly safe, and can be carried without danger on steamers carrying passengers. In this opinion we are confirmed by an official report made by a committee of experts appointed by the board of supervising inspectors of steam vessels, and which was unanimously adopted by the board, of which the following is an extract:

“When the law regulating the carrying of refined petroleum, and using it as stores on steamers carrying passengers, was enacted, the highest test-oil manufactured as the product of petroleum was 110 degrees Fahrenheit. Even then very little of that article was manufactured; but the greatest portion of the product of petroleum at that time put upon the market and sold for illuminating purposes scarcely exceeded a fire-test of 80 degrees Fahrenheit. Yet, notwithstanding all this, refined petroleum which would stand a fire-test of 110 degrees Fahrenheit was considered safe enough to be carried under certain restrictions, according to the provisions of section 4472, Revised Statutes. This, in our opinion, is conclusive evidence that Congress did not intend to prohibit the use of any oil except such as was considered dangerous at the time of the enactment of the law regulating the carrying and using of refined petroleum on passenger steamers. The law further requires every steamer to carry a certain number of signal-lights. Experience has demonstrated that the safety of navigation depends in no small degree upon the use of oil which will give a brilliant light, and which, at the same time, is free from dangerous and explosive properties. Under ordinary conditions refined petroleum is, in our opinion, the best that can be used, especially for signal purposes. If the law is intended to prohibit the use of refined petroleum on passenger steamers, regardless of any fire-test, such steamers must use an article of oil which will not answer the purpose of the law, and hence endanger life and property correspondingly as the oil allowed may fail to meet the requirements of navigation. To assume that Congress intended to exclude or prohibit any oil which experience has demonstrated absolutely safe, would, in our opinion, be an assumption entirely unwarrantable and without foundation in fact. It may be that Congress inadvertently prohibited the carrying of refined petroleum as freight, or using it as stores, on steamers carrying passengers, regardless of any fire-test, no matter how safe the oil might be. If so, the question involved resolves itself into a purely legal question, which will necessitate a decision on the part of the honorable Secretary of the Treasury, as a final settlement of this question, for the guidance of the officers of the steamboat inspection service.”

Under the present law the use of refined petroleum for illuminating purposes on passenger steamers is prohibited. It will be seen, however, from the above extract, that refined petroleum, with a fire-test sufficiently high to make it safe, is very essential in insuring greater safety to navigation, especially where a strong and brilliant light is required for signal purposes.

In the provision at the end of this section it is positively forbidden that nitro-glycerine, glynnin oil, nitrated oil, and all articles of similar character shall be shipped in any manner under any conditions upon any passenger vessel. The transportation of all articles of this character is attended with too much danger to permit them to be transported on any steamer carrying passengers.

ADVANCE WAGES OF SEAMEN IN MERCHANT SERVICE.

JULY 31, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. CANDLER, from the Committee on Commerce, submitted the following

REPORT

[To accompany bill H. R. 4316.]

The Committee on Commerce, to whom was referred the bill (H. R. 4316) for the relief and improvement of seamen in the merchant service by changing the system of advance wages, having considered the same, submit the following favorable report :

For many years the merchants of this country have appreciated the evils of the system of advance wages to seamen, and have endeavored to secure the enactment of laws for the purpose of protecting this class in the community from the injuries inflicted upon them by the boarding-house landlords and the depraved and unscrupulous agents in the seaports who extort money from sailors, rob them of their wages, and debase and degrade them by imposing upon their weakness and credulity.

The evil engendered and encouraged by the system of advance wages is almost universally admitted, and it not only affects the welfare and morals of the sailors, but has been considered by the merchants a great injury to the commercial marine and commerce of the country.

A reform will benefit commerce, save a wasteful expenditure of money, and secure healthier and more efficient crews, and increase safety to travelers on the ocean.

The merchants and ship-owners have been sustained by the philanthropists and the seamen's aid societies, the benevolent institutions generally, and the ministry throughout the country.

In the earlier years of our commercial enterprises the present evils did not exist. Vessels made long voyages, and were manned almost entirely by American seamen, who had families dependent upon them, and who entered into the sailor's life ambitious for promotion to be mates or to command ships themselves. Fifty years ago the boarding-house keepers and shipping masters, as they were called, made their appearance, whose business was to ship crews, pay the amount of money advanced, and collect it, with a fee for their services, after the ship had sailed. We soon began to have more foreigners in the service, which brought a class known as sailor boarding-house runners; and as early as 1834 the Boston Daily Advertiser, representing a large ship-owning class, called attention to reform among seamen in the following language:

The detestable boarding-house landlords' system of advance wages which prevails, and has not a single redeeming feature, is a disgrace to civil society from first to last. It is a tissue of villainy and frauds, in violation of the laws of God and man, which, if

unmasked and fully brought to light, would stir up a general burst of indignation. Its history is briefly told. It meets the sailor miles away from the wharf with a bottle of poison, securing his promise to board with him, who thus gets a mortgage on him, and generally gets the seaman to agree that when he is paid off the kind-hearted and benevolent landlord shall be his banker, he being assured that otherwise he is in danger of falling in with land privateers. But in a few days the landlord offers his man for sale to the party that will pay the most "*advance*." It is a traffic in the flesh of human beings, whom it first brutalizes in order to render them fit subjects for such traffic. This system must be broken up, or all hopes of the general elevation of seamen abandoned.

This statement, made so early, indicates the injustice, cruelty, and demoralization which has continued and exists at the present time. In the interest of sailors connected with the merchant marine, the chambers of commerce and boards of trade of the three great cities of New York, Philadelphia, and Boston have made earnest efforts to do away with the system of advance wages. In 1857 a meeting was held at the Exchange, in the city of Boston. Capt. R. B. Forbes, Hon. Samuel Hooper, William A. Glidden, Frederick T. Bush, William Perkins, and others made a report in favor of this measure, having been appointed at a previous meeting. In the same year a meeting was held at the Philadelphia Exchange, at which Hon. Francis P. Cope was in the chair and Hon. John Welsh was the principal speaker, but nothing was accomplished, although great public interest was excited. In 1867, Capt. D. Tracy, then in charge of the Sailors' Home, in Philadelphia, commenced his work on a new plan. He printed and sent petitions to be signed to all the seaports in this country. Some of them are now before this committee, representing thousands of names. As the result it was hoped that a law would be passed by Congress to correct the evils. The United States shipping act of June 7, 1871, became a law. Ten years have now passed away since that law was enacted. The law has not accomplished the purpose which it was hoped that it would. It has not benefited or elevated the sailors, or destroyed the power of the landlord and the runners. The sailors cannot get a ship or the ship a crew excepting through them. The sailors are still cheated and demoralized, and the owners and the vessels are injured and burdened by expense, and endangered by weak, diseased, and worthless crews.

Your committee have before them the appeals of the Sailors' Magazine, and the efforts of societies to aid seamen, and the petitions of the New England Ship owners' Association, the marine insurance companies, governors of different States, prominent maritime lawyers, United States commissioners, and thousands of the most influential classes in this country acquainted with sailors and maritime affairs, urging the passage of this bill. One petition now before us is signed by one thousand ministers and the representatives of all the sailor bethels. We quote from the Sailors' Magazine for December, 1881, the compact statement as to the origin and evils of the system of advance wages to seamen, written some years ago by Captain Mortimer:

[From the Sailors' Magazine for December, 1881.]

THE SYSTEM OF "ADVANCE."—ITS ORIGIN—WHAT IS SAID OF IT BY PRACTICAL MEN—FROM HIS HONOR JUDGE PIERCE.

For an especially compact statement as to the origin, nature, and evils of the system of advance wages to seamen we commend our readers to the following paper, written years ago by Captain Mortimer, and at that time widely circulated. He said:

"The custom of advancing wages to seamen was instituted many years since, for the purpose of benefiting the sailor by enabling him to purchase proper clothing, &c., to meet the exigencies of the long and tedious voyages of that early period of commercial navigation. It doubtless was a wise and happy provision toward one of the most

useful classes of men, for whose protection and welfare legislation can never be amiss. At the present time, cases of distress or destitution at all in comparison with those of the olden time can hardly occur; for, owing to the widely-extended ramifications of commerce, nearly all the explored oceans of the world are to a great extent studded with vessels of war or traffic, and, since the days of Alexander Selkirk, adventures such as his have ceased to exist. The time of romance, even with the sailor, has passed away. These changes have in a great measure obviated any necessity for which the advance system was instituted, and the practice of it has merged into the greatest evil that can attend the connection between sailors and their ships.

"The only benefit that could result from advancing wages to seamen may be stated in two cases:

"First. That the shipwrecked or otherwise destitute seaman might be enabled to furnish himself with clothing to commence another voyage. As before mentioned, cases of this kind or of entire destitution are rare, except those arising from the sailor's prodigality or intemperance.

"Second. That the married seaman might appropriate the money so received for the support of his family. It must be admitted that the humanity of advancing for this purpose is most praiseworthy, and can meet with no objection; but how often is it misconverted from the good purpose intended?

"The two above-mentioned reasons for advancing wages to seamen seem to be the only ones from which any good can arise, and are the only arguments that can be brought forward in favor of continuing the practice.

"The attendant evils are many and increasing. It debases the sailor by rendering him a more easy prey to the shore parasites, who fatten upon the weakness and credulity of the thoughtless and unthrifty 'outward bound.'

"It renders the sailor more prodigal, by placing at his disposal money that he has not earned and upon which he cannot place a proper value, for he has not labored for it.

"It deprives him of the interest and care that, under other circumstances, he naturally would have towards the ship that furnishes him with employment and pay, because he has already received all that he may earn during a short voyage or passage.

"It renders him less obedient to his officers and inattentive to his duties, because he labors under no fear of stoppage of pay. To use his own words he has a weather gauge of the ship, and fears no reclamation of wages by his employers. Meanwhile, the underwriters would do well to look to the possible consequences. As an attendant result, he is dissatisfied and careless instead of contented and happy, as he probably might be under the sense of the daily addition of the ship's indebtedness to him, and, with its accumulation, would feel a proud satisfaction in honestly earning the sum which would be paid to him at the end of the voyage; for no debts are more sure of being paid than sailors' wages. On the other hand, his discontent may arise from the thought that he is working for nothing, and oftentimes he really is, for how seldom does he touch one penny of his advance.

"It oftentimes renders him dishonest, as it is an incentive towards desertion at the commencement of a voyage, thereby defrauding the ship of the amount advanced to him.

"It renders him for the time a miserable white slave, for he is filled with rum, the better enabling those who lead him on shore to consume his advance money, which is oftentimes his ruin.

"In short, there are innumerable evils attendant upon the practice of advancing wages to seamen. The sailor who is improvident now places himself entirely at the mercy or disposal of those whom he has become indebted to, and the next ship that he will choose will be the one upon whose voyage he may obtain the greatest advance.

"It would, indeed, be the commencement of a happier era to those who go down to the sea in ships if the sailor could place all his confidence in the seaworthiness of his ships and the integrity of his officers. Then, perhaps, Jack would learn that, with all the attendant hardships, the ship would be his best home."

Also the testimony of a few practical men, who have been in contact with sailors for many years, some of them formerly sailors themselves

IT CAUSES THE WORST EVILS.

"I heartily join in this petition, fully believing that the worst of the evils to which our seamen are exposed are caused by the pernicious system of advance wages.

"C. C. DUNCAN,

"United States Shipping Commissioner of the Port of New York."

OF THE GREATEST IMPORTANCE.

"I have spent nine years of my life on the sea. Since that, I have had charge of the Philadelphia Sailors' Home five years; after that, of the New York Sailors' Home

4 ADVANCE WAGES OF SEAMEN IN MERCHANT SERVICE.

for seven years. I believe from forty to forty-five thousand sailors have been shipped and boarded under my care. I consider this movement of the greatest importance. It has my hearty indorsement.

“JOHN H. CASSIDY,
“127, 129 Mercer Street, New York.”

A FRUITFUL SOURCE OF EXTORTION.

“I have investigated the matter of seamen’s advance wages during my official term, and find it to be a fruitful source of extorting money from seamen in violation of law.

“ALFRED A. CONKLIN,
“United States District Attorney.”

NO BENEFIT FOR SEAMEN WITHOUT ITS ABOLITION.

“I am sure no philanthropic effort which has been or may be made can benefit the seamen of the world, unless the present advance system is modified or abolished.

“JOHN H. MORTIMER,
“Burling Slip, New York.”

THE SOURCE OF THE WORST CRIMES.

“I consider the present system of advance wages to seamen to be the bottom cause of the worst of the existing evils and the source of the worst of crimes, and I heartily indorse this petition.

“CHARLES GIBBINS, JR.,
“United States Commission, 3 H Street, Philadelphia, Pa.”

“GOD SPEED THE RIGHT.”

“Since 1835 I have seen and felt the wrongs inflicted on seamen, and cheerfully concur in the object of this petition. I sign it with the prayer: ‘God speed the right.’

“CHARLES BENTWICK,
“Late Deputy United States Shipping Commissioner, Philadelphia, Pa.”

SPEAKING AFTER FIFTY YEARS’ EXPERIENCE—THE FOUNDATION OF WRONG.

“After active life of over fifty years among seamen, during the early part of which I have worked out many a ‘dead horse,’ I am convinced that the system of advance wages to seamen lies at the foundation of nine-tenths of the extortion and robbery to which they are subjected.

“CHARLES J. JONES,
“Chaplain of the Sailors’ Snug Harbor, Staten Island, New York.”

In Tracy vs. Blancois, common pleas court, at Philadelphia, Pa., October 21, 1869, in which case the plaintiff sought to recover \$90 from a sailor landlord who had shipped three men in two different ships, receiving \$180 therefor, his honor, Judge Pierce, presiding, in charging the jury, used the following language:

“GENTLEMEN OF THE JURY: I have always been of the opinion that the port of Philadelphia was a free port, but the evidence elicited in this trial shows me that I was mistaken. It seems that there is one organization here that controls the merchant, the master, and the sailor, and prevents other men from engaging in a business lawful in itself. Gentlemen of the jury: I hesitate not to say that, if these men were presented for criminal conspiracy against the interests of the port of Philadelphia, I would instruct a grand jury to find a bill against them.”

We have been informed that between \$2,000 and \$3,000 have been raised, in that city, to oppose the movement for abolition, a dollar per head having already been taken from hundreds of seamen to make up this sum. Since, it has been divided among the landlords—\$40 per member.

By the passage of this bill, the parties to be benefited are the sailors, by releasing them from the cruelties and demoralization they are now subjected to, leading them to rely on their own manhood, and to be provident of their earnings. It will encourage thousands to remain on board their ships voyage after voyage and lead to their reformation. By im-

THE VENEZUELA AWARDS.

JULY 31, 1882.—Committed to the Committee of the Whole House on the State of the Union, and ordered to be printed.

Mr. W. W. RICE, from the Committee on Foreign Affairs, submitted the following

REPORT:

[To accompany H. Res. 277.]

The Committee on Foreign Affairs, to whom was referred a bill in relation to the Venezuela awards (H. R. 3159), and the message from the President of the United States relative to the same awards, dated May 25, 1882, having had the same under consideration, submit the following report and accompanying joint resolution, the passage of which they recommend.

The committee have not thought it necessary to make any original investigation into the questions relating to the Venezuela awards, the consideration of which has been submitted to them. For fifteen years these awards have been the subject of diplomatic correspondence and Congressional investigations. We have deemed it impossible to obtain, after this long interval, any fresh information, not already spread upon the record, of this correspondence and these investigations. Our work, therefore, is of collation and reference, so far as may be necessary to form conclusions upon the points submitted to us. Our report will be narrative rather than argumentative, and we shall quite briefly state the conclusions which the facts seem to suggest.

CLAIMS AGAINST VENEZUELA.

Prior to 1864 many unsettled claims had accumulated in favor of American citizens against Venezuela. In 1864, Hon. E. D. Culver, then minister of the United States to Venezuela, made schedules of these claims, to be forwarded to his government. Those schedules, marked A and B, are appended to this report.

Schedule A is headed "Claims of citizens of the United States, pending and unliquidated, which have been presented to the Government of Venezuela, with the proofs and documents in support thereof." These claims amount to \$308,263.74, exclusive of those referred to in the note, which nominally would be some \$46,000 more.

Schedule B is headed "Claims of citizens of the United States which have been liquidated and adjusted, but which are yet unpaid in whole or in part." These amount to \$55,314.74.

The minister is careful to guard against prejudicing any claims which might have been brought to his knowledge, or might have been inadvertently omitted by him; but there is no reason to suppose that he *did not* use due care to ascertain and include all claims then known to be outstanding of the character described.

THE TREATY.

April 28, 1866, a convention was made between the United States and Venezuela for a commission for the settlement of claims of citizens of the United States upon the Government of Venezuela. A copy of the treaty, marked C, is hereunto appended. This treaty provided for a mixed commission consisting of two members, one to be appointed by the United States and one by Venezuela, to meet in Caracas within four months from the exchange of the ratification of the convention. The commissioners were to appoint an umpire to act in cases of disagreement between them, and if they could not agree in the selection of the umpire, he was to be named by the diplomatic representative either of Switzerland or of Russia in Washington.

The commissioners were to hear one person in behalf of each government in every separate claim, if so required. They were to issue certificates of the sums to be paid to the respective claimants under their decisions where payment was provided for. The commission was to terminate its labors in twelve months from the date of its organization, except an extension of thirty days, if necessary, for the issue of the certificates on the awards of the umpire. The last article made the decisions of the commission and umpire final and conclusive as to all claims pending at the date of their installation, and claims not presented within the twelve months were to become disregarded and invalid.

By the record of the commission, as deposited in the State Department, it appears that it organized August 30, 1867, and finally adjourned August 5, 1868. This record assumed that the date of the organization was at the first meeting of the two commissioners, rather than at that after the appointment of the umpire, April 18, 1868. A statement of the claims, allowed and disallowed by this commission, is hereto appended, marked D. From this statement it appears that the claims presented to the commission aggregated \$4,823,273.31, of which the commission allowed \$1,253,310.30, and disallowed \$3,569,963.01. It may be inferred from a comparison of these amounts with those reported by Minister Culver that the soil of a commission possesses peculiarly fertilizing qualities for the growth of claims.

PROTEST OF VENEZUELA.

When the first installment of the awards became due, Venezuela protested against payment on the ground of irregularities in the commission, and asked to have the entire award set aside and a new commission ordered. The charge cited especially three cases; at a subsequent time seven cases were cited. Inclosure 1, with the communication of the Secretary of State, forwarded by the President with his message, states these seven cases; they are those of the awards made by the arbitrators; that is, those as to which the commissioners did not agree, but which the umpire was called to settle. These seven claims, as allowed, amounted to \$794,122.

THE PRESIDENT'S MESSAGE.

The President's message is in the Appendix, marked E. It will be noted from this communication (pages 7 and 8) that Venezuela has paid sufficient to enable the United States to pay her dividends upon all the awards amounting to 15 per cent. and still leave a balance on hand of

\$221,065.89. She has not, however, nearly paid the amounts called for by the terms of the treaty protesting against the validity of the awards.

The Secretary of State recommends the passage of an act directing the Court of Claims * * * to hear and determine * * * whether any, and, if so, which of the seven awards objected to by Venezuela were obtained by fraud or corruption. He suggests an inquiry by the Court of Claims as to whether the holders of any of the certificates of awards found to be fraudulent are innocent holders, that they may be instituted for the original claimants in any future negotiations with Venezuela to the extent of their certificates.

The Government of Venezuela protests against the entire action of the commission, alleging that it was tainted by fraud, and therefore should be treated as a nullity. It claims that there has been no valid commission, and therefore that the treaty provision creating a commission is yet unexecuted.

The President says, in his message:

In case either house takes action upon it (the subject of his message) during the present Congress, I shall feel it my duty to direct that this prolonged discussion be definitely terminated by recognizing the absolute validity of all the awards.

It has been argued by able counsel that Congress, surely the House of Representatives, has no jurisdiction in this matter, but that it is wholly for the decision of the Executive; but now the President himself expresses his desire "to secure an expression of legislative purposes and wishes respecting this matter," and "earnestly invites the attention of Congress" to his communication. It does not seem necessary, therefore, to consider this objection to Congressional action at this time, but to enter upon an examination of the subject with the earnestness expressed by the President, and demanded by its great importance. If these awards are tainted by fraud they should not be enforced; but we are now assured that their validity will be recognized unless Congress acts. The right and the duty of Congress are thus made clear. The honor of the nation is committed to it. It devolves upon it to investigate the charges of fraud made by Venezuela, and, having done so, to express its "purposes and wishes."

PREVIOUS CONGRESSIONAL ACTION.

In the Forty-first Congress Mr. Wilkinson, from the House Committee on Foreign Affairs, made a report sustaining the award, but no action was taken thereon. (H. Report, No. 79, second session Forty-first Congress.)

At the second session of the Forty-second Congress Mr. Packard, from the same committee, made a report, which says:

Your committee have examined the testimony and cannot avoid the conclusion that it shows reasonable ground for complaint on the part of the Government of Venezuela and the claimants whose cases were not adjudicated before the tribunal. These complaints are of the following tenor: That powers of attorney were given in some of the cases to the American commissioner, and he received pecuniary compensation for executing the same; that an improper intimacy existed between the American commissioners, the umpire, and Mr. William P. Murray, who was the attorney of sundry claimants, and was also represented as being the secretary of legation, all the claims having to pass through his hands, and that the said William P. Murray received from the tribunal of arbitration certificates to the amount in heard cases of one-half the sum allowed the claimants.

The report closes with the opinion that the President should be directed to suspend payment on the certificates and authorized to enter

into negotiations with Venezuela for a rehearing of the claims. (H. Report No. 29, second session Forty-second Congress.)

In the third session of the same Congress the same committee reviewed its first decision, and, contrary to their former report, said that they did not find "that the complaints were so clearly established as to cause the awards of the commission to be set aside." On this finding a bill passed Congress, February 15, 1873, providing—

That the adjudication of claims by the convention with Venezuela of April 25, 1866, pursuant to the terms of said convention, is hereby recognized as final and conclusive, and to be held as valid and subsisting against the republic of Venezuela.

In the Forty-fourth Congress, first session, an exhaustive investigation was made into these complaints. The report then made, and the testimony which accompanied it, supplemented by that taken before the same committee of the Forty-fifth Congress, so fully cover the whole ground as to render it unnecessary for any future committee to do more than to review it. (Report No. 787, Forty-fourth Congress, first session; Report No. 702, Forty-fifth Congress, second session; Mis. Doc. No. 11, Forty-fifth Congress, second session; Mis. Doc. No. 30, Forty-fifth Congress, second session.)

After a careful review of the whole case, the report of the committee of the Forty-fourth Congress closes as follows:

Now that a careful inquiry has been made by your committee in reference to the conduct of our officials, and also to the fraudulent character of the claims awarded by the commission—which investigation, in the opinion of your committee, has demonstrated the truth and reasonableness of the allegations of Venezuela—a further and continued refusal on the part of our government to respond to the appeals of that government cannot be justified on principles of international honor and comity. If Venezuela were the equal of this government in area, population, and resources, she would have long since ceased to address our government by appeals to our magnanimity and sense of justice, and would have terminated all diplomatic intercourse and assumed toward us the attitude which we now bear toward her. In order, therefore, to vindicate the proud position which our government has always assumed toward other nations of the world, and to preserve intact the peaceful means of national arbitrament for the settlement of all differences arising between nations, we should at once proceed to do full justice in the premises. We can afford to respond to the appeals of Venezuela in this case, and by so doing will honor ourselves and vindicate the ancient precept, that "righteousness exalteth a nation, but sin is a reproach to any people."

In view of the fact that this session of Congress will soon adjourn, and that definite and final legislation on this subject cannot be effected at this session, your committee recommend the passage of the following joint resolution suspending all further payments by the Secretary of State to holders of Venezuelan certificates, and withholding further demands upon Venezuela for future payments until the 4th day of March next, or until further legislation by Congress:

JOINT RESOLUTION in reference to the payment of awards of the Venezuelan mixed commission.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby requested to withhold further demands upon the Government of Venezuela on account of the awards of the mixed commission under the convention of April 25, 1866, until the 4th of March 1877, and the Secretary of State is authorized and directed to suspend all further payments to holders of certificates awarded by said mixed commission until said time, unless Congress shall otherwise direct.

The committee unanimously concur in recommending the passage of the foregoing joint resolution. But upon concurring with the report of the committee, the following explanations are made:

By Mr. MONROE, of Ohio:

The undersigned concurs in the conclusion reached by the committee in regard to the fraudulent character of the claims decided by the umpire and in the disapproval

of the conduct of the United States commissioner, but is not prepared, with present opportunities for examination, to adopt all the incidental statements and opinions of the report.

JAMES MONROE.

By Messrs. PACKER AND BANKS :

The undersigned members of the Committee on Foreign Affairs concur in the foregoing resolution; but in view of the fact that the testimony taken by the subcommittee has not all been printed, has not yet been submitted to the committee, and is incomplete, and that the time afforded for an examination of the questions involved has been limited, they do not wish to commit themselves to all the findings, deductions, and propositions contained in the report.

J. B. PACKER.
N. P. BANKS.

The resolution so reported was unanimously adopted by the House.

The report of the Committee of the Forty-fifth Congress summed up as follows:

The committee think it unnecessary to extend this report to the length that would be required by an exhaustive analysis of the large mass of testimony and documentary evidence bearing upon the case, but propose to state briefly the general conclusions to which a careful examination of all this testimony and evidence and the whole history of the commission has led them. Your committee are of the opinion, from such examination, that there was irregularity in the selection of the umpire, and manifest incompetency on the part of the commission; that some of the claims allowed were, to say the least, very questionable in character, and that the entire proceedings are so tainted with fraud and corruption that the objections urged thereto by the Government of Venezuela are well founded, and its request for a rehearing is entitled to favorable consideration; and that justice to American citizens who have been wronged and defrauded by the commission, as well as a proper regard for the honor and character of this government, requires that there should be a re-examination of all the claims passed upon by that commission.

Following the recommendation of this report Congress, June 20, 1873 repealed the act of February 25, 1873.

The report of the Committee on Foreign Affairs in the Forty-sixth Congress states the leading facts, as follows:

The appointment of the umpire was confirmed on the 18th of June, 1868. This was really the date of the organization of the commission, but the commissioners held that their organization was complete on the 30th of August, 1867, because on that day they had met and consulted about an umpire. They adjourned finally on the 5th of August, 1868, twenty days less than twelve months after organization, according to their own construction, and only three months and eighteen days after the confirmation of the appointment of the umpire. They left unsettled claims amounting to about half a million of dollars, alleging that they were not presented in time, but the evidence tends to show that these claims were not considered because their owners would not pay 50 per cent. thereof, which was the amount demanded as the price of presenting them before the commission.

The testimony conduces to prove that the appointment of the umpire, who was the attorney and agent of Mr. Talmage (the United States commissioner), was procured by him in fraud of both governments; that Mr. Murray, the brother-in-law of the American minister, Stillwell, was permitted to manage the claims before the commission, although no attorney was permitted to appear. (See Mis. Doc. 30, second session, Forty-fifth Congress, p. 24.)

The testimony further conduces to prove that there was a corrupt understanding between Stillwell and Murray and Talmage and the umpire, and a man named Whiton, in New York, by which Murray was to charge for presenting the claims, one-half of the amount allowed by the commission, and that the amount so charged should be divided among the conspirators, and that, to make sure of that amount, the commission, instead of awarding one certificate to each successful claimant, issued certificates of \$100 each, and a few of \$1,000 each, enough in each case to make up the amount awarded, and made them payable to bearer, and that 50 per cent. only of said certificates was delivered to the claimants, the remainder being retained and divided among the conspirators; that Mr. Stillwell's share was one-fifth of the 50 per cent., and amounted to about \$85,000; that the certificates thus retained and divided amounted to \$425,000; that Mr. Talmage, the American commissioner, was the attorney of some of the claimants, and received these certificates to the

amount of several hundred thousand dollars, and was the owner of a large amount of such certificates after his return to this country. The evidence also indicates that all of the seven claims allowed by the umpire, and amounting to \$794,122, were either without any foundation or were grossly and fraudulently enlarged.

These numerous and influential findings of our predecessors have constrained this committee to the conclusion that they would be remiss in duty did they allow the validity of these awards to be recognized without at least an examination of the testimony upon which these findings were based.

THE COMMISSION..

Ratifications of the treaty were exchanged April 17, 1867. The treaty was proclaimed May 29, 1867. David M. Talmage, of New York, having business interests in Caracas, was appointed commissioner on the part of the United States July 20, 1867. August 4, 1867, he arrived at Caracas, and presented his credentials to the government on the 8th of the same month. On the 19th he was notified of the appointment of General Antonio Grosman Blanco, then the foremost man of Venezuela, as commissioner for that government. On the 30th the commissioners met and exchanged credentials, and appointed a secretary.

Talmage indulged in angry correspondence with the representatives of the Venezuelan Government, complaining of an intention to delay the organization of the commission, but there is no evidence of any such intention. Affairs were then unsettled in Venezuela, and General Blanco was absent from home and otherwise busy. Talmage's complaints are quite as indicative of an intention on his part to quarrel with the Venezuelan Government.

At the first meeting, August 30, the commissioners conferred as to the selection of an umpire.

At the first meeting Talmage proposed T. O. G. Rolandus, consul-general of the Netherlands; General Blanco objected to Rolandus, but offered to accept either one of the diplomatic representatives of four European powers, to wit, England, France, Germany, and Spain, then resident at Caracas. Talmage refused to accept either one of these, but insisted upon Rolandus. This contention continued until October 7, when Blanco resigned and Francesco Condè was appointed in his place. Condè added to the names proposed those of nine eminent persons resident in Caracas, one of them William Stinup, consul-general of Denmark, a prominent and reliable person, sometimes, both before and since this time, intrusted with the affairs of the United States legation, as well as of Denmark; but the devotion of Talmage to Rolandus could not be shaken. He proposed no other name and would accept none of those suggested by his associate. We append the minutes of the commission on this subject, marked F. Venezuela need not be ashamed to compare the style and temper of the two commissions.

By referring to these records it appears that September 13 Blanco suggested that application should be made to the minister of Switzerland or Russia at Washington, according to the treaty for the selection of an umpire. To this Talmage objected in the language found in the record. October 7 Talmage remarked—

That in virtue of so much time consumed on his part in endeavoring to agree upon an umpire and of his determination not to accept *now* any person that may be proposed, his desire now is that the designation of an umpire be submitted to the ambassador or minister of Switzerland or Russia, accredited at Washington as provided in the treaty.

Talmage swears in his testimony that he first became acquainted with Juan N. Machado, jr., afterwards umpire, in September. October 4 he

executed a power of attorney to this Machado to attend to his private business during an absence; and on the 9th he left Caracas for the United States, with a protocol referring the selection of an umpire to the Russian or Swiss minister at Washington. We shall hereafter have opportunity to become better acquainted with Machado, but it is well to inquire now, who was this Rolandus upon whose selection as umpire the American commissioner insisted to the exclusion of everybody else and to the great delay of the business of the commission.

No. 42 of the claims presented to the commission was by W. P. Murray, and was for some broken bank notes to the amount of \$483,686.53. Referring to the testimony of Murray (Mis. Doc. No. 11, second session, Forty-fifth Congress, p. 85), it appears that he received these notes from Rolandus, and represented him in presenting them. The person for whom Talmage consented to act as umpire, to the exclusion of all others, was interested to this great amount against the government upon which he was to be forced as umpire, which he afterwards sought to prove by transfer to an American citizen. It is true the claim was disallowed. Better opportunities had presented themselves, in the mean time, more profitable to all parties in interest, excepting Venezuela and Rolandus; and Rolandus, being no longer useful, was dismissed without his once anticipated reward.

October 22, Talmage was in New York with a protocol, signed by himself and Condè. The method by which this protocol was obtained is given by Talmage himself in his statement before the Foreign Affairs Committee of the Forty-first Congress (H. Report No. 79, Forty-first Congress, second session, p. 5). After describing his last meeting with Blanco, which resulted in the resignation in disgust of that commissioner, and stating that Francesco Condè was appointed in his stead, Talmage says:

Aggrieved by the many indignities already suffered at the hands of that government, and in view of my determination to return to the United States, I declined any communication with the newly-appointed commissioner unless he should consent that, at our first meeting, we determine to refer the appointment of an umpire (as provided by treaty in case of non-agreement by commissioners) to the ambassador of Russia at Washington. Two months or more having elapsed in vain attempts to secure a selection by commissioners, the commissioner of Venezuela finally consented to such proposition; and at our first official meeting, 7th October, 1867, we protocolized our respective governments to that effect. * * *

For more than three months the commission awaited the appointment of an umpire. I forbear to comment upon such delay, save to remark that it was not occasioned by any lack of promptness or solicitation on the part of the United States.

This promptness and solicitation had consisted in suggesting the name of Rolandus for umpire August 30; in refusing to consider any name proposed by Blanco or Condè; in refusing, September 13, Blanco's proposition to refer the selection to one of the designated ministers at Washington, and October 7, three days after having made Juan N. Machado, jr., his private attorney, insisting that the selection should be referred to Washington.

Mr. Talmage declares his opinion of Condè in his testimony as follows:

I found him to be a wily, astute diplomat, alive to every artifice and subterfuge by which to secure advantage in argument or negotiation.

The committee have not the advantage of Condè's expressed opinion of Talmage.

Talmage arrived in New York October 22. He was able to restrain his impatience for action sufficiently to refrain from writing to the De-

partment of State regarding the appointment of an umpire until November 13. November 15 Mr. Seward acknowledged receipt of this letter.

November 18 Mr. Seward addressed Thos. N. Stillwell, United States Minister to Venezuela, the following note:

DEPARTMENT OF STATE,
Washington, November 18, 1867.

SIR: The department is informed by Mr. Talmage, United States commissioner under the convention with Venezuela for the adjudication of the claims of American citizens against the latter government, that the commissioners have been unable to agree upon the selection of an umpire to decide upon any case or cases upon which they may disagree, or upon any point of difference that may arise in the course of their proceedings.

The contingency provided for in the convention has consequently occurred, and the parties must request the diplomatic representative, either of Switzerland or of Russia, in Washington, to appoint the umpire.

Mr. Florencio Rivas, chargé d'affaires *ad interim* of Venezuela, having been addressed in reference to the above state of affairs, in a communication of the 12th instant, informs this department that he has received no instructions from his government upon the subject.

You will, therefore, at an early date after your reception by the President of Venezuela, in a communication to the minister of foreign affairs, urge the necessity of that government's immediately instructing their representative to unite with this department in requesting the minister of His Majesty the Emperor of Russia to make the appointment, Switzerland having no diplomatic representative in this country.

I am, sir, your obedient servant,

WM. H. SEWARD.

THOMAS N. STILLWELL, Esq.,
&c., &c., &c.

At this time it appears Rivas, Chargé of Venezuela, had received no instructions from his government regarding the appointment of an umpire.

November 23, Talmage left New York for Caracas, where he arrived December 7.

January 24, 1868, Mr. Seward addresses a note to Rivas, informing him of the receipt of a communication from Gutierrez, venezuelan minister of foreign relations, and requesting him to unite in requesting the minister of Russia to make the appointment of an umpire, Switzerland having no minister at Washington.

February 6, the application was made to Baron Stoeckl, Russian Minister.

February 27:

WASHINGTON, February 27, 1868.

By your communication of the 6th of February ultimo, you send me a copy of a convention between the United States and Venezuela to arrange the arbitrament of certain claims, in which convention it is stipulated that, in case the two commissioners employed respectively by the two governments do not agree with the election of one arbiter, he will be appointed by me as representative of His Majesty the Emperor of all Russia in the United States.

I have been trying to fulfill the confidence reposed in me by those two governments, and therefore I have appointed an impartial and respectable man as arbiter, which man is Señor Machado; who, according to the best information I get about him, has the qualifications.

I have submitted his election to Mr. Rivas, who is in charge of the business belonging to the United States of Venezuela, and he has regarded it as favorable.

I am, &c.,

STOECKL.

April 18, the minutes of the commission record the following:

CARACAS, April 18, 1868.

Whereas the ambassador of Russia at Washington City has appointed an umpire in pursuance of the convention entered into between the Government of the United States and that of Venezuela on the 25th of April, 1866, and Mr. Juan N. Machado,

jr., being the person so appointed, and he having accepted same, and made proper oath before the commission, and the commissioners at the same time having been hereon advised by their respective governments, they resolved to continue the meetings of the Mixed Commission, pursuant to resolution of 7th October, 1867, and to notify the same to the minister resident of the United States and Venezuela.

Resolved that the meetings of the commissioners be holden daily (Sundays excepted), from 1 to 4 o'clock p. m., at the office of the commission, No. 30 Sol street, Caracas.

Adjourned to the following day at 1 p. m.

DAVID M. TALMAGE,
Commissioner of the United States.

FRANCISCO CONDE,
Comisionado de los EE. Unidos de Venezuela.

ALFRED ALDERSON, *Secretary.*

April 22, Mr. Seward addressed the following note to Baron Stoeckl:

WASHINGTON, April 22, 1868.

DEAR SIR: Upon turning to your note appointing the arbiter under the convention between the United States and Venezuela, it is noticed that you accidentally omitted his Christian name. As it is desirable that the omission should be supplied, you will oblige me either by withdrawing the original note and substituting another of the same date with the full name of the person intended to be appointed, Juan N. Machado, junior, or by addressing to me a supplementary note stating that it was your intention to appoint that gentleman.

I am, very truly yours,

W. H. SEWARD.

Mr. EDWARD DE STOECKL, &c., &c., &c.

Mr. Haywood, clerk at the Department of State, testified as to the result of this letter as follows:

Q. What was the date of Baron Stoeckl's original letter?—A. February 22, 1868. The subsequent one, which is on file as the original, was no doubt substituted by Baron Stoeckl himself.

Mr. PILE stated to the committee that Mr. Machado took the oath of office as umpire and entered on the duties of the office in Caracas on the 18th of April, 1868.

By Mr. PILE:

Q. On the original of this note is there a note by Mr. Hunter, Assistant Secretary of State, which fixes the date of the substitution of the second original for the first?—A. The original is supposed to bear date 27th of February, 1868. The translation does not give the date. Afterward we discovered that Baron Stoeckl did not give the Christian name of the umpire, and then this letter of the 22d of April was written to him asking him to supply the omission, either by withdrawing the note and sending another one, or else giving a supplementary note. He seems to have been satisfied with giving a duplicate of the first note, putting in the Christian name of Mr. Machado, and Mr. Hunter has put upon it the date of its receipt, 29th of April. The first note is marked, "Received 28th of February," and the next 29th of April. The latter note was no doubt handed in in person, with the date of the first note, and was substituted for the first note, as it was never supposed that any more would be thought of it; and as we only wanted a translation for the use of the office no new translation was made, but Mr. Hunter took his pen and wrote in the translation of the first note the words, "Juan N." and "jr."

April 7, Mr. Talmage had written Mr. Seward the following letter:

CARACAS, April 7, 1868.

SIR: I am notified by Thomas N. Stillwell, United States minister resident at this legation, that Mr. Edward de Stoeckl, the diplomatic representative of Russia in Washington City, on the previous invitation of the Governments of the United States and Venezuela, had been pleased to name Juan N. Machado as umpire under the convention between the United States and Venezuela, concluded at Caracas, April 25, 1866.

Our minister resident, Thomas N. Stillwell, has notified Juan N. Machado, junior, of his appointment as umpire, he being undoubtedly the person intended, and not the father, Juan N. Machado, senior, who is disqualified, being aged and infirm.

I mention this circumstance so that the person intended be particularly designated, so as to prevent any possibility of misunderstanding in the future.

The business of the commission will now proceed.

I have the honor to be, your obedient servant,

DAVID M. TALMAGE.

Hon. WILLIAM H. SEWARD,
Secretary of State of the United States, &c., &c., &c.

This correspondence tells its own story and requires no explanation or comment from the committee.

February 27, 1867, Baron Stoeckl appointed Señor Machado as umpire.

April 7, 1868, Talmage informed Secretary Seward that Stillwell, United States minister, had notified Juan N. Machado, jr., that he was appointed umpire, he being undoubtedly the person intended, and not the father, Juan N. Machado, senior, who is disqualified, being old and infirm.

April 18. Juan F. Machado, jr., appeared and took his oath as umpire.

April 29. Baron Stoeckl, at request of the State Department, first wrote into his note of appointment "Juan N." "junior."

Juan N. Machado, jr., was the son of a respectable citizen of Caracas, who it is claimed was by no means incapacitated by age and infirmity. Talmage swears that he first became acquainted with the young man in September, 1867. He was so well pleased with him that he appointed him his private attorney, to look after his matters during his visit to the United States to see about the appointment of an umpire.

Soon after the breaking up of the commission Machado left Venezuela, and seems to have since passed his time in the United States and Europe. The young man was engaged in some business in which he had been established by his father at the time of his selection as umpire.

It is claimed that the appointment was procured by suggesting the name of the father, and afterwards substituting the son, already Talmage's private attorney.

The committee have no means of settling this point except inferentially from the facts and correspondence above stated.

The commission was thus at last organized.

It was composed of D. M. Talmage, commissioner on the part of the United States; Francisco Cendé on the part of Venezuela, and Juan N. Machado, jr., umpire. Cendé resigned upon the decision of the umpire as to rules of procedure, and May 7, 1868, José Gregorio Villafané was appointed in his place, and thus the final adjudicating commission was composed. The history of its organization would seem to justify a watchful eye upon its proceedings.

WILLIAM H. WHITON.

In the winter of 1867-'68 there seems to have been a man named William H. Whiton engaged in the paint and lead business in Fulton street, New York City. In his testimony he swears that he never knew Stillwell, Murray, or Machado; he was not an attorney-at-law; he was ignorant of the Spanish language; he knew nobody in Venezuela, and yet he became attorney for the prosecution of three claims before the commission for the sum of \$525,000, upon which the commission allowed \$352,814. These were the Idler claim, the Ralph Randon claim, and the James Barnes claim, neither of which is found in the schedule made up by Minister Culver. Why Whiton was selected to represent these claims does not very distinctly appear. He thinks that a Mr. Bogert first spoke to him of the Idler claim, but does not speak very positively about it. He seems to have done nothing about the matter except to have gone to Washington, where he claims that he was informed by some one in the State Department "that if there was an honest claim against Venezuela it was the Idler claim." He swears that he then occupied some six or eight weeks to go over the accounts, &c., not to

prove the claim against Venezuela, but to see how it should be divided between the Idler heirs and other parties claiming an interest. He wrote a letter or two about the claim to a Mr. Bermudes at Caracas. He gave Talmage a power of attorney to act for him, authorizing him to do everything he could do regarding the presentation of the claim, receipt of its proceeds, &c. Talmage seems to have performed his duty as attorney most faithfully. The commission, of which he was a member, considered it first upon the list, and awarded \$252,814, the certificate for which Talmage receipted for and brought to the United States. For his services in these matters Whiton swears that he was to have one-third of the Idler claim, and other testimony indicates that he was to have 50 per cent. of the others.

Mr. Henry Woodruff, an attorney of New York, represented about a quarter of a million of Venezuela claims. His testimony relating to Whiton is as follows:

In the spring of 1866 I learned that Mr. Talmage, the commissioner on the part of the United States, had sailed for Venezuela, and I understood about the same time that the Russian minister had designated the umpire to act in connection with the commissioners. Wishing to present the claims in accordance with such rules as the commission might establish, I sought to communicate in some manner with Mr. Talmage, and to that end called upon his brother, a resident of the city of New York, a gentleman who was in business there at that time, and he referred me to a Mr. Whiton, who, he informed me, attended to all matters relating to the Venezuelan business for Mr. Talmage. At that time Mr. Whiton was doing business or had an office on Fulton street, north side, east of Broadway. I called upon Mr. Whiton, and he asked me why I inquired in reference to the matter. I told him that I represented certain claims against the Government of Venezuela. He then said to me that he was engaged in sending forward claims to be placed before the commission, and that if my clients desired he would send forward the claims that I represented. I informed him that there was a gentleman then resident in Caracas to whom I proposed to send the claims to act in behalf of my clients, if any action was required. He (Whiton) said that he would only take charge of the matter upon condition that the claimants should enter into an agreement to permit him to designate an attorney to act in the matter in Caracas, and receive the certificates or awards that might be made, and that in consideration of the service he was to retain at least one-half of such awards. I suggested to him that I thought the compensation was large, considering the service to be done, as I had the matter all prepared, had presented the claims already myself to the government, and that they were in fact acknowledged, at least I so considered them to be by the correspondence I had with the secretary of foreign affairs and the minister of Fomento. Perhaps I had better state in explanation of this that the government did not in terms agree to pay the bonds of the railway, but it acknowledged the seizure of the railroad; acknowledged having taken possession of the franchises of the corporation so far as the running of the road and taking possession of its receipts was concerned. They acknowledged also that they had transferred the enterprise to one Clark, an Englishman, but contended that they had transferred with it the liabilities that pertained to the enterprise. I held, on the contrary, I thought in accordance with law, that when the government had seized the enterprise, and assumed to discharge the subscribers to the stock from their liabilities (the government itself being a subscriber to the stock), it thereby became liable for the bonds of the corporation; and, further, that if the government attempted, as it had done, to dispose of the property to a foreigner, it must itself become liable for the bonds of the corporation then outstanding. For that reason I considered that practically the liability of the government for the bonds was established. I did not consider that anything was to be done before the commission by an attorney. In response to some remarks of mine in regard to the largeness of the consideration demanded by Mr. Whiton, he informed me that he would not forward any claims for less than one-half; and then remarked that as to one claim that he had forwarded: "We have two-thirds;" and "That claim," says he, "will appear as No. 1 on the list." He did not mention the claim or the claimant; his manner, however, and the positiveness of his assertions in regard to its appearance as No. 1 on the list, caused me to believe that his associations were somewhat intimate with the commission, and I therefore reported the matter to my clients for their consideration, suggesting to them that it might be desirable that they should accede to his demand. They declined, however, and desired me to confer again with Mr. Whiton, and see if I could not make better terms.

I had a second conference with him, ascertained that I could obtain no different arrangement than the one he had indicated, and I therefore closed the conference, and had no further interviews with him. I then forwarded the papers in the claims, the one standing in my own name on the bonds, and the claim of Flanagan, Bradley, Clark & Co., to the American legation at Caracas. That was about the 9th day of June, 1868. I was advised of the receipt of the claims at the legation, not by any letter from the minister or his secretary, but by a letter from Mr. Sturup, who at the time I was in Caracas was the representative of the Government of Denmark, and, as I understood, at times had charge of our legation when the minister happened to be absent. I had written to Mr. Sturup, asking that he would call upon the legation, and see that the claims were properly presented before the commission. In August, 1868, I received from him a letter dated the 6th of that month, in which he informs me of his having called at the legation in reference to the matter.

Whiton admits the conversation, while denying many of its details.

James S. Mackie, for twelve years at the head of the South American division in the Diplomatic Bureau in the Department of State, twice United States commissioner to South America, made the following statement before the committee of his knowledge of Whiton in this matter:

With my memorial and with my package of bonds, I went to Mr. Talmage's office, supposing that I would find him some prominent lawyer or merchant of large experience in New York. I went into a coal-broker's office and found Mr. Talmage to be a coal-broker, dealing largely in anthracite coal. I introduced myself and congratulated him upon his appointment, and said: "Mr. Talmage, I want you to do me a favor—to look at a memorial which I have here (referring to a parcel of bonds). Have the goodness to count the bonds over and to see that they are all there, as stated in my memorial, and take charge of them in behalf of American citizens, whom I represent as attorney." Mr. Talmage said, "I cannot have anything to do with that kind of business." I said, "I beg your pardon; I thought you were a commissioner on the part of the United States to represent our citizens." Said he, "I have nothing to do with taking charge of their claims." I said, "Mr. Talmage, if you will excuse my personality, I was twelve years in the Department of State, and I have known all about all the commissions to the Spanish Governments in that time, and I have never yet heard a commissioner, either an American commissioner or a foreign commissioner, say that it was no part of his duty to take charge of the claims of his fellow-citizens. I take it that that is one of the objects of your appointment." He said, "I cannot recognize that at all. I will have nothing to do with it." I then said, "Mr. Talmage, I was a commissioner of the United States myself to Peru, and I felt it not only a duty, but a privilege, to give every attention that I could to American claims before I went abroad." He still persisted. I said, "It is very strange; here I am an attorney for these recognized claims, and you, as commissioner, refuse to take charge of them. What am I to do?" Said he, "Mr. Mackie, I advise you to go to a gentleman who happens to have a great deal of that business in his hands, and I think he is the best man that you can give your claims to." I said "Who is he?" He said "Mr. William H. Whiton." He gave me his address—I think some place in John street or Maiden Lane. I went down to that place, and went through rows of bales of hay piled up all through a warehouse, until I came to a gentleman sitting with his hat on at the desk writing. I said, "Is Mr. Whiton here?" This gentleman looked up and said "Yes." I said, "Whiton, is that you?" I recognized in him an old friend and neighbor of mine when I was living on the heights of Georgetown. Said I, "I am looking for another man." He said, "Who?" I said, "A man of the same name, W. H. Whiton." He said, "What do you want with him?" I said, "I was referred to him by Mr. Talmage as having charge of Venezuelan claims; but you have nothing to do with Venezuelan claims?" "Yes," said he, "I have; I am the man." With a little strength of expression I asked him what the deuce he knew about Venezuelan claims. He said that he had peculiar facilities for presenting them and having favorable action upon them. I said, "Whiton, I have got a bundle of claims here, but I do not know why I should give them to you more than to anybody else. What are you going to charge for taking care of them?" He said, "50 per cent." Said I, "That is modest. There is about \$180,000 of these claims, and as much accrued interest, and you want half for presenting the memorial and claims. All the claims are recognized; they are simply protested notes of Venezuela. I cannot give you 50 per cent., because I could not control that." Said he, "I cannot do it for less, for I have got to divide." I said, "You cannot divide any of my friends' money," and I went out. I then immediately wrote to the Department of State and transmitted my papers, and I have the receipt from the Department of State, in which the department promised to send them to Venezuela.

It is probable that Mr. Mackie mistook the brother of Talmage for Talmage himself. Whiton admitted the interview but denied many of the details, as he had done with Woodruff.

MINISTER THOMAS N. STILLWELL.

Thomas N. Stillwell was appointed minister for the United States to Venezuela in the fall of 1867. He was a citizen of Anderson, Ind., where he was president of a bank. He was not confirmed as minister, and returned to Indiana early in 1868. He died in 1874; both he and his bank being largely insolvent. Stillwell had a brother-in-law, by name William P. Murray, a practising lawyer in Saint Paul, Minn. Murray's eye was quite open to the main chance. His character and aspirations can be judged from the following letter, addressed by him to Stillwell.

OFFICE MINNESOTA INSURANCE COMPANY,
Saint Paul, Minn., September 21, 1867.

DEAR TOM: Your letter was received last night. In reply, Colonel Nobles, of this city, who was in Venezuela in 1862 and 1863, was contracted with by that government to run a line of mail steamers from New York City and La Guayra, a port of the Republic of Venezuela. This contract was made while Paez was chief. As soon as he was deposed and the Falcon faction came in power, the contract was abrogated, and this at a time when he had one steamer ready for sea, and another almost ready. The contract run for thirty years, the Government of Venezuela paying \$50,000 a year for three years, and \$60,000 for twenty-seven years, with extraordinary privileges. Under this contract Nobles claims damages to a large amount. He is anxious that I should take hold of it for him and go out with you. He thinks by seeing Paez, the late chief and President of Venezuela, and Dr. J. C. Beales, of New York, that in addition to this claim they could put me on the track of a large amount of business. Beales resided a number of years in Caracas, and is in high favor with the present party in power. Nobles has shown me a letter from Beales, in which he offers to give letters to any one who goes out to all the principal men of the republic, and Paez to the principal men of his party. I feel disposed to try it on. As soon as you reach Washington I want you to post yourself thoroughly as to the lay of the land, and write me in detail. Johnson should have made the resident minister commissioner, which he had the power to do under the resolution authorizing the appointment. The commissioner will make the money. Cannot Talmage be rejected by the Senate as commissioner? Nobles will send you a letter of introduction to Dr. Beales, and while *en route* to Washington, or on return home, I want you to see him. He will post you as to how we shall proceed, &c.

Colonel Nobles proposes, if I consent to go, to foot the expense-bill in case of a failure to succeed in accomplishing anything. Yet it might be a fellow would have to stay six or eight months in that God-forsaken country, where a nigger, a negro, a black man, a colored gentleman, is better than a white man.

I would like to have something to do. Can you not, while in Washington, ring me in some way as an attaché, consul, attorney, or something else that will pay? Look to this. It would suit me better to go out the last of November. Our courts commence the fall term a week from Monday, and I will be busy most of the month; after they close it will take two or three weeks to get everything ready. All well. Write me as soon as you make any discovery.

Yours,

MURRAY.

Murray testified (Mis. Doc., Forty-fourth Congress, second session, p. 63), that when he first heard of Stillwell's appointment to Venezuela, "I was as ignorant of Venezuela as an ordinary member of Congress would be of Jerusalem. I don't know that I had ever heard of it until I heard of Mr. Stillwell's appointment. But he knew Colonel Nobles, of the firm of Beales, Nobles & Garrison, of New York, and the claim of which he speaks in his letter expanded to one for \$614,700 before the commission, of which \$250,000 was allowed. This claim does not appear upon the schedule furnished by Minister Culver. Murray accompanied Stillwell to Caracas, where, as events will show, he became a leading member of the United States deputation in that city.

Talmage sought Stillwell's acquaintance during his visit to New York from Caracas. Stillwell and Murray met Talmage while in New York. In November they sailed for Caracas, and Talmage followed on the next vessel.

WHAT THE COMMISSION DID.

After the organization of the commission by the induction of Machado as umpire, the first thing was to settle the rules to regulate its proceedings. The most important of these were to the effect that the claims were to be listed by the secretary in the order in which they were presented. (As they were presented from the American legation, this put it in Stillwell's power to arrange the list.) That—

3. Each claim shall be considered by the commission according to the order in which it may appear on the secretary's list; and shall be finally decided upon by the commissioners in the same order, within five days, to count from that upon which the commission shall have resolved to consider it.

And, sixth, that—

When an award shall be made upon any claim by virtue of the decision of the commissioners or that of the umpire, the commissioners shall issue certificates of the sum or sums to be paid the respective claimant or claimants (of like tenor and date) in such number and for such amount each as the respective claimant, agent, or attorney may request: *Provided*, That whenever more than one certificate shall be issued for or on account of any one award the amounts in the aggregate in such several certificates expressed shall not exceed the amount of the sum awarded such respective claimant by virtue of the decision made by the commissioners or the umpire, as provided in article 3 of the convention.

Rules 3 and 6 were opposed by the Venezuelan commissioner, Condé, but were allowed by the umpire. He claimed that the purpose of the last rule was to enable a division and distribution to be made to parties in interest, without depending upon the good faith of the original claimant. He shrewdly added:

That such a division of the indemnities very probably might arouse in the public mind a suspicion that their product would be divided among several persons, which would lean to the detriment of the honor and probity of the commission.

When the umpire decided against him Condé resigned and Villafane was appointed in his place.

After this the business of the commission ran along quite smoothly.

The umpire was qualified April 18. August 5 the commission closed its labors. August 6 Talmage and Murray took boat for New York. Stilwell had preceded them, not having been confirmed by the Senate.

The commission awarded \$1,253,310.30; of which Murray represented \$851,000; Whiton represented \$352,000=\$1,203,000; leaving a balance allowed to others of \$50,000. The claims represented by Woodruff and Mackie were pigeon-holed "without prejudice," whatever that may mean.

Talmage and Murray receipted for, and carried away, all the certificates of award, excepting for \$10,000 to Lorenzo H. Finn.

It is not the purpose of the committee to analyze or discuss, to any extent, the voluminous testimony which has been taken regarding this matter before former committees of this House.

In 1869 and 1870 we find Stilwell, Talmage, and Murray all earnestly at work in Washington to secure the passage of an act making the Venezeulan certificates redeemable by the United States. They were very much interested in behalf of the holders of these certificates. In this they did not succeed, but they did succeed in procuring the payment of two dividends upon them, one of 7 per cent. and one of 8 per cent. The letters of congratulation which they wrote to one another,

not forgetting "Dear John" Madrado, are very interesting and suggestive reading, but it is unnecessary for our present purpose to do more than to refer to them.

The triumvirate were first brought to bay in the Forty-fourth Congress.

SETH DRIGGS,

a remarkable figure throughout all these transactions, to whom an award of about \$300,000 was made, partly in his own right and partly as attorney for other parties, memorialized Congress, charging that the whole proceedings of the commission had been fraudulent. The following is an extract from Driggs's memorial:

The commission passed a rule that one claim should be decided within every five days, and as there were forty-nine claims pending in the legation to be adjudicated, and only ninety working days remaining of the twelve months allowed by the treaty for the commission to conclude its labors, it was believed that not more than half the claims could be adjudicated within the time limited.

The American minister intimated that those claims supported by powers of attorney would have the preference of being sent to the board of commissioners for adjudication. Mr. Talmage himself advised your memorialist to give a power of attorney to Murray, as it would be for his interest to do so, and Murray was very urgent; and finally on the 6th of May, 1868, seven days after the prohibitory rule had been passed (which was well known to Murray, but concealed from your memorialist), the power of attorney was signed authorizing William P. Murray to prosecute your memorialist's claims before the mixed commission; which power had been previously prepared by Murray, with a clause to allow him one-half the amount to be adjudicated, with authority for David M. Talmage to draw the certificates from the board of commissioners.

Under all the circumstances, and considering his advanced age and infirmities, your memorialist was actually coerced into the measure for fear of being left out in the cold, as some others were, whose powers of attorney omitted the 50-per-cent clause.

Driggs seems to have been willing to pay 50 per cent. upon that part of the award which belonged to him, but charged that Talmage took and retained \$150,000, or one-half of the entire award made in his name, while he had only agreed to pay one-half of that belonging to himself. Driggs's testimony was direct and positive; if believed it would fully sustain the allegations of fraud against Talmage. Of course this committee are obliged to take the testimony as it reads, without the advantage of seeing and hearing the witness as he gave it.

It is certain, however, that Driggs, a man thoroughly competent to manage his own affairs, with his proofs all prepared, himself in Caracas, agreed to pay one-half of his immense claim to Murray when allowed, and that Talmage should draw the certificates. For what innocent purpose this could have been done cannot be conceived, and Driggs swears positively that it was for the purpose of bribery and corruption. In the judgment of this committee the admitted facts tend strongly to corroborate his testimony.

Talmage was a witness before the same committee. He was closely pressed as to his ownership of certificates of awards made by the commission, of which he was a member, and charged with having acted corruptly as such. The following is extracted from his testimony:

Q. Did you ever give Mr. Orth to understand that you owned some of these certificates in your own right?—A. I presume so.

Q. State how much you owned.—A. I have no idea.

Q. From whom did you get them, and in what manner?—A. I cannot tell exactly; my impression is that what I had I bought. In disposing of certificates, selling them, &c., I bought some myself at times.

Q. From whom did you ever buy any?—A. I was interested in some that I bought from Murray.

Q. How much did you buy from Murray?—A. I cannot tell you exactly.

Q. Those certificates that you bought from Murray, did they have the name of Seth Driggs as payee?—A. No, sir.

Q. You cannot tell how many of these certificates you owned at that time?—A. No, sir.

Q. Nor from whom you bought them, except that you bought some of them from Murray?—A. I recollect buying some of them from Murray.

Q. What did you pay Murray for them?—A. I think I paid about 30 cents on the dollar.

Q. How much did you buy from Murray?—A. I do not know.

Q. Did you buy \$1,000 or \$50,000 of certificates?—A. I may have bought \$6,000 or \$7,000 of certificates.

Q. Did you pay in cash for them 30 cents on the dollar?—A. I did.

Q. When was that?—A. I cannot tell.

Q. Can you give any idea?—A. No, sir; it was a couple of years ago.

Q. Was it not immediately after your return from Venezuela?—A. No, sir.

Q. Did you come from Venezuela with Murray?—A. I did.

Q. Did you purchase any of these certificates from him in New York, on your arrival from Venezuela?—A. No, sir.

Q. Not one?—A. No, sir.

Q. Do you mean you bought \$6,000 or \$7,000 worth of them, or bought certificates of that amount of face-value?—A. That amount of face-value.

Q. What have you done with those certificates?—A. I sold them.

Q. To whom?—A. I cannot tell you.

Q. Did you ever draw any dividends on them?—A. No, sir.

A few pages further along we find the following :

Q. Do you own any of these certificates now?—A. No, sir.

Q. How long is it since you owned any of them?—A. Six months or a year; a year at least, I think.

Q. From whom did you purchase the last certificates that you had?—A. From Murray.

Q. Where is Murray now?—A. I suppose in Saint Paul, Minn.

Q. How many certificates does he own?—A. I do not know.

Q. How many did you purchase from him then?—A. From seven to ten.

Q. At 30 cents on the dollar?—A. I am not certain about that; it was between 30 and 40 cents.

This uncertain knowledge under such circumstances was certainly suspicious.

In the Forty-fifth Congress Murray was a witness before the committee. It would seem that he had not reviewed the testimony given before the last committee with sufficient care. He swore that he had sold Talmage certificates. He swore to selling him three lots. After he had given this testimony the following questions and answers appear:

Q. Then you sold him in all \$30,000, \$25,000, and \$14,000 of them?—A. I sold him in all \$69,000.

Q. How much money did you get for them?—A. At my figuring, there was \$30,000 at 33½ cents; \$14,000 at 15 cents; and \$25,000 at 10 cents, making \$14,600.

Q. Mr. Talmage, then, has paid you in cash \$14,600 for \$69,000 of these certificates?—A. Yes, sir.

Q. How do you explain that in connection with this testimony of Mr. Talmage, on page 92 of the printed report: "A. I recollect buying some of them of Mr. Murray.

Q. What did you pay Murray for them?—A. I think I paid 30 cents on the dollar. Q. How much did you buy from Murray?—A. I do not know. Q. Did you buy \$1,000 or \$5,000 of certificates?—A. I may have bought \$6,000 or \$7,000 of certificates. Q. Did you pay in cash for them, 30 cents on the dollar?—A. I did. Q. When was that?—A. I cannot say."

The WITNESS. That was the last purchase.

Mr. SPRINGER (continuing quotation). "Can you give any idea?—A. No, sir; it was a couple of years ago. Q. Was it immediately after your return from Venezuela?—A. No, sir. Q. Did you come from Caracas with Murray?—A. I did. Q. Did you purchase any of these certificates from him in New York, on your arrival from Venezuela?—A. No, sir. Q. Not one?—A. No, sir. Q. Do you mean that you bought \$6,000 or \$7,000 worth of them, or bought certificates of that amount of face value?—A. That amount of face value. Q. What have you done with those certificates?—A. I sold them. Q. To whom?—A. I cannot tell you. Q. Did you ever draw any dividends on them?—A. No, sir." Now, it seems that after a very sharp examination of Mr. Talmage, he only admitted to have bought, on the face value, \$6,000 or \$7,000 of these

certificates from you, yet you say here that you sold him \$69,000 worth.—A. I do; yes, sir.

Q. Then he is wrong about it?—A. Well, I am correct, so far as my statement is concerned. I do not know what he swore to.

Q. Are you sure that he has paid you this amount of money in cash for these certificates?—A. Well, I know that he has.

Murray was very forgetful and uncertain how Talmage paid him; only he was sure *it was in currency*, and could not tell where he deposited or used the money.

But Talmage was not the only one to be covered by Murray's protection. Stillwell died in 1874. Among the assets of the bank which he had shipwrecked were found \$80,400 of the Venezuela certificates pledged for his overdrafts. How came they into his possession? Murray attempted to explain this by saying the bonds were his; that he had left them with Stillwell for safe keeping, and that he had pledged them without leave for his own indebtedness. Why, living in Saint Paul, Minn., he should have deposited these bonds in Anderson, Ind., for safe keeping, or why he should have so deposited a portion and not all of which he was the fortunate possessor, is not apparent to an ordinary understanding.

Another remarkable witness appeared before the committee of the Forty-fifth Congress in the person of John C. Nobles, brother of Colonel Nobles, of Beals, Nobles & Gamsen, who had died. John C. swore that his brother disclosed to him before his death the frauds by which the awards were made by the commission, and gave him a letter from Murray, in which Murray wrote to him in detail how much he paid to different parties to accomplish his purposes.

Murray denied writing this letter, which would have been exact and conclusive evidence. It was exhibited to the committee, but as the testimony of Nobles was hearsay and scarcely warranted by rule, this committee choose not to dwell upon it at length.

There was very much more testimony, the reading of which conduces to establish the truth of the charges of fraud alleged by Venezuela. The committee has, however, thought best to call special attention to the above points taken from the parties themselves. We cannot see how our predecessors in the Forty-fourth and Forty-fifth Congresses, from the testimony before them, could have failed to reach the conclusions they did, and which are already stated in this report. In our opinion any honest and intelligent jury, upon the recorded testimony, would convict Talmage, Machado, Stilwell, and Murray of conspiring to defraud Venezuela through the mixed commission of 1867 and 1868.

Having concurred in the conclusions reached by our predecessors, to the effect that members of the mixed commission were improperly interested in the claims before them, it remains to decide what legislative action we shall recommend.

Congress cannot remain inactive and allow these awards to be enforced against Venezuela and distributed to these guilty conspirators; they have already secured too much of their booty. Nor can the committee, after examining the testimony and reaching the conclusions stated above, adopt the recommendation of the Secretary of State and refer the awards for examination to the Court of Claims.

The Committee on Foreign Relations of the Senate, during the present session, through its chairman, Mr. Windom, have reported on a bill referring the Venezuela award to the Court of Claims, as follows:

That in their opinion the Court of Claims cannot be clothed with jurisdiction to modify or annul the action of the commission organized under the provisions of the act of April 20, 1866, between the governments of the United States and Venezuela.

The committee are also of the opinion that the Department of State has full power and authority touching the distribution of the moneys paid in under the awards made by said commission, and they therefore recommend the indefinite postponement of said bills.

The grounds of decision taken by this committee render it unnecessary to discuss the correctness of the foregoing opinion.

The treaty with Venezuela provides for a commission to consider the claims of American citizens against Venezuela. There has been no valid commission as called for by that treaty.

The alleged commission was a conspiracy; its proceedings were tainted with fraud. That fraud affects its entire proceedings. It was diseased throughout, and there is no method known to the committee by which to separate the fraudulent part from the honest part, and establish any portion in soundness and integrity. *Falsus in uno, falsus in omnis.*

It is a principle not only of the common law, but of universal jurisprudence that *fraud* vitiates every act public or private. No record, however solemn, estops an allegation of fraud. Judgments of courts of competent jurisdiction impart absolute verity whenever they are brought in question, but if obtained by *fraud* they are set aside.

Justice to Venezuela demands that these proceedings should be set aside speedily and without circuitous action. The Court of Claims is an American tribunal in whose creation Venezuela has no voice, and to whose jurisdiction she has not submitted. She has agreed to submit these claims to a mixed commission, and as yet there has been no such tribunal where action is binding and valid. She is now ready to co-operate with our Executive in creating such a commission, and professes to be ready to perform its awards. A great nation seeking a position of highest influence among the republics of the continent cannot afford to do anything in her own dealings with these republics inconsistent with exact and impartial justice. Her honor must be kept unstained. We do not recognize any conceivable danger to innocent holders of these certificates of award, if any such there are. The certificates have no such character as to exempt them from the equities between the original parties. Moreover, the same precautions suggested for the protection of innocent holders can be provided regarding the awards of new commissions.

Justice to the parties who refused to comply with the demands of the conspirators, and whose claims were not considered by the former commission, requires a new one by whom they can be heard and judged according to their merits.

Your committee therefore report the following joint resolution, and recommend its adoption.

All of which is respectfully submitted.

JOINT RESOLUTION providing for a new mixed commission, in accordance with the treaty of April 25, 1866, with the United States of Venezuela.

Whereas, since the dissolution of the mixed commission appointed under the treaty of April 25, 1866, with the United States of Venezuela, serious charges impeaching the validity and integrity of its proceedings have been made by the Government of the United States of Venezuela, and also charges of a like character by divers citizens of the United States of America, who presented claims for adjudication before that tribunal;

And whereas the evidence to be found in the record of the proceed-

ings of said commission, and in the testimony taken before committees of the House of Representatives in the matter, tends to show that such charges are not without foundation;

And whereas it is desirable that the matter be finally disposed of in a manner that shall satisfy any just complaints against the validity and integrity of the first commission, and provide a tribunal under said treaty constructed and conducted so as not to give cause for just suspicion;

And whereas all evidence before said late commission was presented in writing and is now in the archives of the State Department;

And whereas the President of the United States has, in a recent communication to Congress, solicited its advisory action in this matter: Therefore,

Resolved by the Senate and House of Representatives in Congress assembled, That the President be, and he hereby is, requested to open diplomatic correspondence with the Government of the United States of Venezuela, with a view to the revival of the general stipulations of the treaty of April 25, 1866, with said government, and the appointment thereunder of a new commission to sit in the city of Washington; which commission shall be authorized to consider all the evidence presented before the former commission in respect to claims brought before it, together with such other and further evidence as the claimants may offer; and from the awards that may be made to claimants, any moneys heretofore paid by the Department of State, upon certificates issued to them, respectively, upon awards made by the former commission, shall be deducted, and such certificates deemed canceled; and the moneys now in the Department of State received from the Government of Venezuela on account of said awards, and all moneys that may hereafter be paid under said treaty, shall be distributed *pro rata* in payment of such awards as may be made by the commission to be appointed in accordance with this resolution.

SCHEDULE A.

Claims of citizens of the United States, pending and unliquidated, which have been presented to the Government of Venezuela, with the proofs and documents in support of same.

1. Claim of Amos B. Corwin, in behalf of insurance company, for illegal seizure and condemnation of ship and goods in 1829. Whole claim was about \$55,000, twenty-eight and one-half parts of which are for Venezuela to pay. New Granada has paid its share, \$27,337.34; interest to be added	\$14,000 00
2. Claim of Seth Driggs for illegal conviction and imprisonment. Presented in 1857	100,000 00
3. Claim of ship Napaa for illegal charges for port-dues and damages for retaining ship and papers. Presented in 1846	10,000 00
4. Claim of Guellermo E. Willet for forcibly taking his store and goods by the government, in August, 1859, and damages consequent thereon. Presented with the proofs and documents on 22d March, 1864	150,791 07
5. Claim of Seth Driggs for loss and damage on goods by troops in Campano in 1835, with interest to be added. Case presented to government in 1859	2,680 00
6. Claim of Lorenzo H. Firin for goods and materials taken by or furnished to the Federal Army in Aragua, all certified by the president of that State, and proved by divers witnesses. Presented with the proofs and documents on the 12th October, 1864. Interest to be added	17,542 67
7. Seth Driggs's claim for unlawful seizure and detention of the brig Fannie in 1828, and loss of 36,398 pounds of cocoa. This was originally a claim against the Colombian Government. The share for Venezuela to pay, with interest, amounting now to	10,000 00

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|---|-----------|
| 8. Seth Driggs, claim in relation to the lost treasure of the Spanish ship San Pedro, in consequence of an unlawful revocation of a grant or covenant by the government of Venezuela. Interest for nine years to be added | 16,250 00 |
| 10. Claim of the heirs of Ebenezer Goodrich for goods and materials taken by troops in Campano in 1835, to value of \$1,000, and interest to be added, with loss to business and causing his ruin | 1,000 00 |

There are other claims not yet formally presented, as international claims, some of which, as, for instance, that of Henry Woodruff, esq., the holder of 46 first-class mortgage-bonds, issued by the Railroad Company of the East, and pending for settlement or payment before a particular department of the government, and upon the action of such department will depend the fact whether or not they shall become international claims. And as to all such, together with any other cases not yet fully prepared to be presented to the government, the undersigned reserves the right to present them hereafter, and they are not to be deemed prejudiced by not being specifically mentioned or included in the foregoing schedule.

Caracas, November 14, 1864.

E. D. CULVER.
United States Minister, &c.

SCHEDULE B.

Claims due the citizens of the United States which have been liquidated and adjusted, but which are yet unpaid in whole or in part.

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|--|------------|
| 1.—Balance due on the "Espera claims," with interest at 5 per cent., from 22d of November 1862 till paid | \$5,759 57 |
| 2.—Balance due on ship Constantia claim with interest at 8 per cent. from 22d of November, 1862, until paid | 2,882 42 |
| 3.—Balance due on "Geo. W. Johnston" claim with interest at 6 per cent. from November 22, 1862, till paid | 1,152 52 |
| 4.—Balance due on claim of ship Horatio with interest from 26th of June, 1860, by being made part of Espera claim | 1,097 96 |
| 5.—Amount of Seth Driggs's three orders for money loaned the government, and for repairs and furniture for government house with interest from 30th June, 1864 | 2,672 15 |
| 6. Pension due widow Margaret Clark from 1st March 1858, to 1st August 1864, at \$20 per month, with subsequent months to be added | 820 00 |
| 7. Interest due Capt. Nathaniel Jarvis on his bonds issued by the government (the whole principal \$81,000), being due by reason of non-payment of semi-annual interest when due | 12,150 00 |
| 8. Amount of two orders due Gen. T. L. Hagadorn, issued by government 11th June, 1863, on the custom house, for patent invention sold the government | 2,000 00 |
| 9. Due on the "breakwater claim" to Thos. A. Walter, as fixed by the government, with interest at 5 per cent. from 30th March, 1858 | 24,648 12 |
| 10. Due Oliver Taylor for 50 barrels flour confiscated illegally, in Maracaibo, in 1839 | 1,132 00 |

The amount agreed upon by the minister of foreign affairs and the United States minister was \$1,132, with 6 per cent. interest from the time of confiscation.

The national executive was to submit it to Congress. It was so submitted to that body, but it finally adjourned without acting on the case, and no congress has since been convened.

There may be other particular claims not brought to the knowledge of the undersigned, or some may have been inadvertently admitted by him.

I shall claim that all such shall not be prejudiced by not appearing in the schedule.
Caracas, November, 14, 1864.

E. D. CULVER,
United States Minister, &c.

C.

Treaty between the United States and Venezuela April 25, 1866. (See U. S. Stats. at Large, 43d Congress, in relation to public treaties, pp. 806, 807, 808.)

[Extracts.]

ARTICLE I. All claims on the part of corporations, companies, or individuals, citizens of the United States, upon the Government of Venezuela, which may have been presented to their government, or to its legation in Caracas, shall be submitted for examination and decision to a mixed commission, consisting of two members, one of whom shall be appointed by the Government of the United States and the other by that of Venezuela. In case of death, absence, resignation, or incapacity of either of the commissioners, or in the event of either of them omitting or ceasing to act, the Government of the United States or that of Venezuela, respectively, or the minister of the United States in Caracas, by authority of his government, shall forthwith proceed to fill the vacancy.

The commissioners so named shall meet in the city of Caracas within four months from the exchange of the ratification of this convention; and, before proceeding to business, they shall make solemn oath that they will carefully examine and impartially decide according to justice, and in compliance with the provisions of this convention, all claims submitted to them, and such oath shall be entered on the record of their proceedings.

The commissioners shall then proceed to appoint an umpire to decide upon any case or cases concerning which they may disagree, or upon any point of difference that may arise in the course of their proceedings. And if they cannot agree in the selection, the umpire shall be named by the diplomatic representative either of Switzerland or of Russia, in Washington, on the previous invitation of the high contracting parties.

ARTICLE II. So soon as the umpire shall have been appointed, the commissioners shall proceed, without delay, to examine the claims which may be presented to them under this convention; and they shall, if required, hear one person in behalf of each government on every separate claim. Each government shall furnish, on request of either commissioner, all such documents and papers in its possession as may be deemed important to the just determination of any claim.

In cases where they agree to award an indemnity, they shall determine the amount to be paid, and issue certificates of the same. In cases where the commissioners cannot agree, the points of difference shall be referred to the umpire, before whom each of the commissioners may be heard, and whose decision shall be final.

The commissioners shall make such decision as they shall deem, in reference to such claims, conformable to justice, even though such decision amount to an absolute denial of illegal pretensions, since the including of any such in this convention is not to be understood as working any prejudice in favor of any one, either as to principles of right or matters of fact.

ARTICLE III. The commissioners shall issue certificates of the sums to be paid to the claimants, respectively, by virtue of their decisions or those of the umpire, and the aggregate amount of all sums awarded by the commissioners, and of all sums accruing from awards made by the umpire shall be paid to the Government of the United States. Payments of said sums shall be made in equal annual payments, to be completed within ten years from the date of the termination of the labor of the commission; the first payment to be made within six months from same date. Semi-annual interest shall be paid on the several sums awarded, at a rate of 5 per cent. per annum from the date of the termination of the labors of the commission.

ARTICLE IV. The commission shall terminate its labors in twelve months from the date of its organization, except that thirty days' extension may be given to issue certificates, if necessary, on the decisions of the umpire in the case referred to in the following article. They shall keep a record of their proceedings, and may appoint a secretary.

ARTICLE V. The decisions of this commission, and those (in case there may be any) of the umpire, shall be final and conclusive as to all pending claims at the date of their installation. Claims which shall not be presented within the twelve months herein prescribed will be disregarded by both governments, and considered invalid.

D.—General statement of claims of citizens of the United States against Venezuela considered convention of

Date of decision.	No. of claims as per secretary's list.	Date of claim.	Name of claimant.	Cause, origin, or nature of claim.	Amount claimed.
1868. May 22	6	Aug. 14, 1865	José Castel	Injury to his property from occupation by troops.	\$3,863 75
29	17	Aug. 1, 1839	Oliver Taylor.....	Flour confiscated in Maracaibo ...	1,132 00
June 5	9	May 6, 1824	Amos B. Corwin	Injuries, confiscations, &c., by privateer General Santander.	24,560 86
8	8	Oct. —, 1851	Jonthan C. Morrill.....	Losses occasioned by detention and embargo of the brig Horatio, in Maracaibo.	30,928 42
8	4	Aug. 17, 1864	Leonardo Peck	Property seized by armed force....	23,181 75
9	2	Nov. 9, 1841	John H. Williams.....	Invoice of mirrors, &c., for the government house.	2,489 11
9	10	Nov. 4, 1863	Marg. Watson de Clark	Pension as widow of Captain John Clark, of the Venezuelan navy.	1,780 00
9	15	Feb. 22, 1865	Charles H. Lœhr.....	Destruction of property	9,020 57
9	18	Aug. 7, 1857	Morris Ketchum.....	Services to the republic	3,000 00
9	16	1859.....	Lorenzo H. Finn.....	Goods, &c., seized by federal troops	17,542 64
18	31	1868.....	Seth Driggs	Losses, &c., from denial of justice	25,000 00
18	33	1833.....	do	Infraction of law	1,000 00
July 2	34	1818.....	do	Representing owners of brig Good Return.	10,000 00
2	35	1847.....	do	Representing owners of ship Nassau	10,000 00
6	23	1835.....	do	Representing the heirs of Benjamin Goodrich, destruction of property.	6,000 00
6	12	June 1, 1862	Frederick Wipperman	Losses incurred from Goagira Indians on board the Clara Rosa Sutel, stranded.	13,000 00
6	24	Oct. 18, 1865	Narcissa de Hammer..	Murder of her husband, the captain of the steamer Apure, in Apurito.	100,000 00
6	25	Oct. 18, 1865	Amelia de Brissot	Murder of her husband on board the steamer Apure, in Apurito.	100,000 00
6	26	Oct. 18, 1865	Joseph Stackpole	Injuries and losses from wounds received on board the said steamer Apure.	25,000 00
6	27	Oct. —, 1865	Ralph Rawdon.....	Loss of steamer Apure, and losses incurred by Orinoco Steam Navigation Company.	100,000 00
6	39	1854	John E. Gowan and Franklin Copeland.	Los Monges Islands, guano, &c....	1,045,000 00
8	19	1828.....	Seth Driggs.....	Losses incurred from illegal embargo cocoa, in Güiria.	12,957 36
8	21	1835.....	do	Goods and effects seized in Carupano by Colonel P. Carujo.	16,459 68
9	5	Feb. —, 1865	Lorenzo Jové	Loss of property and supplies made to the federation.	43,129 25
10	32	1839.....	Seth Driggs	Losses incurred from annulling of contract.	51,238 00
16	14	1812.....	Jos. Forest, Geo. Beale, and Dan'l Delaney.	Detention and consequent loss in La Guayra of the Yeaton, laden with flour.	8,181 70
17	28	.....	John Cortes	Notes of emission	394 89
17	43	July 26, 1826	Robert W. Gibbs.....	Bonds of Colombian origin	15,600 36
17	29	1812.....	Executors of John Donnell.	For 480 barrels of flour	6,868 00
17	30	1812	Hollins & McBlair, ex'rs of Frank Hollins.	For 520 barrels of flour.....	9,660 88
17	38	1820.....	Richard O'Dwyer.....	Services done to the republic.....	4,000 00
17	40	1818.....	Paul Bettiker.....	do	7,050 00
18	42	1868.....	W. P. Murray.....	Venezuelan bank-notes	463,086 55
20	7	Sept. 5, 1863	Beales, Nobles, & Garrison.	The arbitrary annulling of two contracts for immigration and steam communication.	614,700 00
23	11	1852, '53, '54	Seth Driggs	Two years' illegal imprisonment, expenses, damages, losses, &c.	134,375 00
23	41	1812	Mrs. E. B. Scott, widow of Alex. Scott.	Asks reward for services done to the republic by her deceased husband.	.....
25	13	1863.....	Albiño Abbiatti	Damages for breach of contract...	54,300 00
29	44	July 26, 1864	Leonardo M. Peck ...	Property seized	2,552 00
31	3	Aug. 2, 1859	William E. Willet	Damages and losses sustained in his storehouses occupied by government troops.	150,000 00

and decided on the dates mentioned by the mixed commission, or the umpire, according to the April 25, 1866.

Interests claimed.	Total of capital and interest claimed.	Amounts awarded by the commission.	Amounts awarded by the umpire.	Amounts rejected by the commission.	Amounts rejected by the umpire.	Total of am'ts awarded by commission and umpire.	Total of amounts rejected by commission and umpire.
.....	\$3,863 75	\$2,000 00	.....	\$1,833 75	.....	\$2,000 00	\$1,863 75
\$1,969 68	3,101 68	1,742 63	.....	1,359 05	.....	1,742 63	1,359 05
.....	24,560 86	15,445 59	.....	9,115 27	.....	15,445 59	9,115 27
31,546 98	62,475 40	.....	.....	62,475 40	.....	.....	62,475 40
5,559 60	28,741 35	25,000 00	.....	3,741 35	.....	25,000 00	3,741 35
4,530 18	7,019 29	.....	.....	.....	\$7,019 29	.....	7,019 29
.....	1,780 00	.....	.....	.....	1,780 00	.....	1,780 00
1,894 31	10,914 88	.....	.....	10,914 88	.....	.....	10,914 88
1,980 00	4,980 00	.....	.....	4,980 00	.....	.....	4,980 00
9,473 02	27,015 66	10,000 00	.....	17,015 66	.....	10,000 00	17,015 66
.....	25,000 00	.....	.....	25,000 00	.....	.....	25,000 00
2,100 00	3,100 00	.....	.....	3,100 00	.....	.....	3,100 00
30,000 00	40,000 00	.....	.....	40,000 00	.....	.....	40,000 00
12,600 00	22,600 00	.....	.....	22,600 00	.....	.....	22,600 00
.....	6,000 00	.....	.....	.....	6,000 00	.....	6,000 00
.....	13,000 00	.....	.....	.....	13,000 00	.....	13,000 00
.....	100,000 00	50,000 00	.....	50,000 00	.....	50,000 00	50,000 00
.....	100,000 00	35,000 00	.....	65,000 00	.....	35,000 00	65,000 00
.....	25,000 00	15,000 00	.....	10,000 00	.....	15,000 00	10,000 00
.....	100,000 00	100,000 00	.....	.....	.....	100,000 00	.....
.....	1,045,000 00	.....	.....	1,045,000 00	.....	.....	1,045,000 00
.....	12,957 36	12,000 00	.....	957 36	.....	12,000 00	957 36
.....	16,459 68	16,000 00	.....	459 68	.....	16,000 00	459 68
.....	43,139 25	.....	.....	43,139 25	.....	.....	43,139 25
.....	51,238 00	22,000 00	.....	29,238 00	.....	22,000 00	29,238 00
27,490 51	35,672 21	5,655 18	.....	30,017 03	.....	5,655 18	30,017 03
.....	394 89	.....	.....	394 89	.....	.....	394 89
23,076 48	15,600 36	4,344 90	.....	11,255 46	.....	4,344 90	11,255 46
.....	29,914 48	19,000 00	.....	10,944 48	.....	19,000 00	10,944 48
32,460 67	42,121 55	26,000 00	.....	16,121 55	.....	26,000 00	16,121 55
.....	4,000 00	.....	.....	4,000 00	.....	.....	4,000 00
.....	7,080 00	.....	.....	7,050 00	.....	.....	7,050 00
.....	463,086 55	.....	.....	463,086 55	.....	.....	463,086 55
.....	614,700 00	.....	\$250,000 00	.....	364,700 00	250,000 00	364,700 00
.....	134,375 00	100,000 00	.....	34,375 00	.....	100,000 00	34,375 00
.....							
.....	54,300 00	.....	.....	.....	54,300 00	.....	54,300 00
.....	2,552 00	.....	.....	2,552 00	.....	.....	2,552 00
.....	150,000 00	.....	141,000 00	.....	9,000 00	141,000 00	9,000 00

General statement of claims of citizens of the

Date of decision.	No. of claims as per secretary's list.	Date of claim.	Name of claimant.	Cause, origin, or nature of claim.	Amount claimed.
1868.					
Aug. 3	1	June 30, 1825	Jacob Idler	War supplies as per contract	\$70,529 11
Aug. 3	48	July 1, 1811	José F. Garcia Cadiz..	War supplies	19,138 50
Aug. 3	49	.....	James Barnes.....	Pensions and military services....	100,000 00
Aug. 4	20	1848.....	Seth Driggs	Money loaned at interest to the Cumana custom-house.	3,689 11
Aug. 4	22	.....	William S. Miller	Injuries and losses.....	20,000 00
Aug. 4	36	1847.....	Seth Driggs	Damages from denial of justice...	35,000 00
Aug. 4	37	1853	Seth Driggs, attorney for widow and heirs of Capt. John Clark.	Ships Good Return and Medea....	142,674 00
Aug. 5	45	Jan., 1827 ...	W. H. Aspinwall, ex- ecutor of G. G. Howland, &c.	Consolidated debt of Venezuela of 5 per cent.	183,000 00
Aug. 5	46	1863.....	Flanagan, Bradley, Clark, &c.	Losses from contract of Eastern Railway.	175,800 00
Aug. 5	47	1863.....	Henry Woodriff	Shares of Eastern Railway Co....	46,000 00
					3,942,884 49

CARACAS, August, 1868.

United States against Venezuela, &c.—Continued.

Interests claimed.	Total of capital and interest claimed.	Amounts awarded by the commission.	Amounts awarded by the umpire.	Amounts rejected by the commission.	Amounts rejected by the umpire.	Total of am'ts awarded by commission and umpire.	Total of amounts rejected by commission and umpire.
\$255,105 42½	\$325,625 54	.....	\$252,814 00	.....	\$72,811 54	\$252,814 00	\$72,811 54
65,451 96	84,590 46	.....	.....	\$84,590 46	.....	.....	84,590 46
.....	100,000 00	.....	.....	100,000 00	.....	.....	100,000 00
.....	3,689 11	.....	1,808 00	.....	1,881 11	1,808 00	1,881 11
.....	20,000 00	.....	11,500 00	.....	8,500 00	11,500 00	8,500 00
.....	35,000 00	.....	35,000 00	.....	.....	35,000 00	.....
.....	142,674 00	.....	102,000 00	.....	40,674 00	102,000 00	40,674 00
375,150 00	558,150 00	.....	.....	558,150 00	.....	.....	558,150 00
.....	175,800 00	.....	.....	175,800 00	.....	.....	175,800 00
.....	46,000 00	.....	.....	46,000 00	.....	.....	46,000 00
880,388 81½	4,823,273 31	\$459,188 30	794,122 00	2,990,297 07	579,665 94	1,253,310 30	3,569,963 01

ALFRED ALDERSON, *Secretary of Mixed Commission.*

A list of persons to whom certificates of award have been delivered by the mixed commission at Caracas, name of claimant, and the number and amount of each certificate delivered.

To whom certificate delivered.	Name of claimant.	No. of certificate.	Amount of certificate delivered.
W. P. Murray, for Thomas N. Stillwell, attorney in fact.	Oliver Taylor.....	3	\$871 31½
Do	do	4	871 31½
W. P. Murray, attorney in fact of F. Aponte, executor, &c.	Leonardo Peck	8	2,500 00
Do	do	9	2,500 00
Do	do	10	2,500 00
Do	do	11	2,500 00
Do	do	12	2,500 00
Do	do	13	2,500 00
Do	do	14	2,500 00
Do	do	15	2,500 00
Do	do	16	2,500 00
Do	do	17	2,500 00
Lorenzo H. Finn	Lorenzo H. Flynn	18	1,000 00
Do	do	19	1,000 00
Do	do	20	1,000 00
Do	do	21	1,000 00
Do	do	22	1,000 00
Do	do	23	1,000 00
Do	do	24	1,000 00
Do	do	25	1,000 00
Do	do	26	1,000 00
Do	do	27	1,000 00
W. P. Murray, attorney in fact	Narcissa D. Hammer.....	28	2,500 00
Do	do	29	2,500 00
Do	do	30	2,500 00
Do	do	31	2,500 00
Do	do	32	2,500 00
Do	do	33	2,500 00
Do	do	34	2,500 00
Do	do	35	2,500 00
Do	do	36	2,500 00
Do	do	37	2,500 00
W. P. Murray, for W. P. Murray and Ramon Palenzuela, attorneys in fact.	Amelia D. Brissot	48	1,750 00
Do	do	49	1,750 00
Do	do	50	1,750 00
Do	do	51	1,750 00
Do	do	52	1,750 00
Do	do	53	1,750 00
Do	do	54	1,750 00
Do	do	55	1,750 00
Do	do	56	1,750 00
Do	do	57	1,750 00
W. P. Murray, attorney in fact	Joseph Stackpole.....	68	1,500 00
Do	do	69	1,500 00
Do	do	70	1,500 00
Do	do	71	1,500 00
Do	do	72	1,500 00
D. M. Talmage, attorney	Ralph Rawdon, secretary and treasurer.	78	2,500 00
Do	do	79	2,500 00
Do	do	80	2,500 00
Do	do	81	2,500 00
Do	do	82	2,500 00
Do	do	83	2,500 00
Do	do	84	2,500 00
Do	do	85	2,500 00
Do	do	86	2,500 00
Do	do	87	2,500 00
Do	do	88	2,500 00
Do	do	89	2,500 00
Do	do	90	2,500 00
Do	do	91	2,500 00
Do	do	92	2,500 00
Do	do	93	2,500 00
Do	do	94	2,500 00
Do	do	95	2,500 00
Do	do	96	2,500 00
Do	do	97	2,500 00
Do	do	98	2,500 00
Do	do	99	2,500 00
Do	do	100	2,500 00
Do	do	101	2,500 00
Do	do	102	2,500 00
Do	do	103	2,500 00
Do	do	104	2,500 00

List of persons to whom certificates of award, &c.—Continued.

To whom certificate delivered.	Name of claimant.	No. of certificate.	Amount of certificate delivered.
D. M. Talmadge, attorney	Ralph Rawdon, secretary and treasurer	105	\$2, 500 00
Do	do	106	2, 500 00
Do	do	107	2, 500 00
Do	do	108	2, 500 00
Do	do	109	2, 500 00
Do	do	110	2, 500 00
Do	do	111	2, 500 00
Do	do	112	2, 500 00
Do	do	113	2, 500 00
Do	do	114	2, 500 00
Do	do	115	2, 500 00
Do	do	116	2, 500 00
Do	do	117	2, 500 00
Do	Seth Driggs	118	2, 000 00
Do	do	119	2, 000 00
Do	do	120	2, 000 00
Do	do	121	2, 000 00
Do	do	122	2, 000 00
Do	do	123	2, 000 00
Do	do	124	2, 000 00
Do	do	125	2, 000 00
Do	do	126	2, 000 00
Do	do	127	2, 000 00
Do	do	128	2, 000 00
Do	do	129	2, 000 00
Do	do	130	2, 000 00
Do	do	131	2, 000 00
Do	do	132	2, 000 00
Do	do	133	2, 000 00
Do	do	134	2, 000 00
Do	do	135	2, 000 00
Do	do	136	2, 000 00
Do	do	137	2, 000 00
Do	do	138	2, 000 00
Do	do	139	2, 000 00
Do	do	140	2, 000 00
Do	do	141	2, 000 00
Do	do	142	2, 000 00
W. P. Murray, attorney in fact of executors.	Executors of John Donnell, deceased..	148	3, 166 66
Do	do	149	3, 166 66
Do	do	150	3, 166 66
Do	do	151	3, 166 66
Do	do	152	3, 166 66
Do	do	153	3, 166 66
W. P. Murray, attorney in fact	Frank Hollins, administrator	154	4, 333 33 $\frac{1}{3}$
Do	do	155	4, 333 33 $\frac{1}{3}$
Do	do	156	4, 333 33 $\frac{1}{3}$
Do	do	157	4, 333 33 $\frac{1}{3}$
Do	do	158	4, 333 33 $\frac{1}{3}$
Do	do	159	4, 333 33 $\frac{1}{3}$
Do	Beales, Noble & Garrison	160	10, 000 00
Do	do	161	10, 000 00
Do	do	162	10, 000 00
Do	do	163	10, 000 00
Do	do	164	10, 000 00
Do	do	165	10, 000 00
Do	do	166	10, 000 00
Do	do	167	10, 000 00
Do	do	168	10, 000 00
Do	do	169	10, 000 00
Do	do	170	10, 000 00
Do	do	171	10, 000 00
Do	do	172	10, 000 00
Do	do	173	10, 000 00
Do	do	174	10, 000 00
Do	do	175	10, 000 00
Do	do	176	10, 000 00
Do	do	177	10, 000 00
Do	do	178	10, 000 00
Do	do	179	10, 000 00
Do	do	180	10, 000 00
Do	do	181	10, 000 00
Do	do	182	10, 000 00
Do	do	183	10, 000 00
Do	do	184	10, 000 00
D. M. Talmadge, attorney	Seth Driggs'	185	1, 000 00
Do	do	186	1, 000 00
Do	do	187	1, 000 00
Do	do	188	1, 000 00

List of persons to whom certificates of award, &c.—Continued.

To whom certificate delivered.	Name of claimant.	No. of certificate.	Amount of certificate delivered.
D. M. Talmadge, attorney.....	Seth Driggs	189	\$1,000 00
Do	do	190	1,000 00
Do	do	191	1,000 00
Do	do	192	1,000 00
Do	do	193	1,000 00
Do	do	194	1,000 00
Do	do	195	1,000 00
Do	do	196	1,000 00
Do	do	197	1,000 00
Do	do	198	1,000 00
Do	do	199	1,000 00
Do	do	200	1,000 00
Do	do	201	1,000 00
Do	do	202	1,000 00
Do	do	203	1,000 00
Do	do	204	1,000 00
Do	do	205	1,000 00
Do	do	206	1,000 00
Do	do	207	1,000 00
Do	do	208	1,000 00
Do	do	209	1,000 00
Do	do	210	1,000 00
Do	do	211	1,000 00
Do	do	212	1,000 00
Do	do	213	1,000 00
Do	do	214	1,000 00
Do	do	215	1,000 00
Do	do	216	1,000 00
Do	do	217	1,000 00
Do	do	218	1,000 00
Do	do	219	1,000 00
Do	do	220	1,000 00
Do	do	221	1,000 00
Do	do	222	1,000 00
Do	do	223	1,000 00
Do	do	224	1,000 00
Do	do	225	1,000 00
Do	do	226	1,000 00
Do	do	227	1,000 00
Do	do	228	1,000 00
Do	do	229	1,000 00
Do	do	230	1,000 00
Do	do	231	1,000 00
Do	do	232	1,000 00
Do	do	233	1,000 00
Do	do	234	1,000 00
Do	do	235	1,000 00
Do	do	236	1,000 00
Do	do	237	1,000 00
Do	do	238	1,000 00
Do	do	239	1,000 00
Do	do	240	1,000 00
Do	do	241	1,000 00
Do	do	242	1,000 00
Do	do	243	1,000 00
Do	do	244	1,000 00
Do	do	245	1,000 00
Do	do	246	1,000 00
Do	do	247	1,000 00
Do	do	248	1,000 00
Do	do	249	1,000 00
Do	do	250	1,000 00
Do	do	251	1,000 00
Do	do	252	1,000 00
Do	do	253	1,000 00
Do	do	254	1,000 00
Do	do	255	1,000 00
Do	do	256	1,000 00
Do	do	257	1,000 00
Do	do	258	1,000 00
Do	do	259	1,000 00
Do	do	260	1,000 00
Do	do	261	1,000 00
Do	do	262	1,000 00
Do	do	263	1,000 00
Do	do	264	1,000 00
Do	do	265	1,000 00
Do	do	266	1,000 00
Do	do	267	1,000 00
Do	do	268	1,000 00

List of persons to whom certificates of award, &c.—Continued.

To whom certificate delivered.	Name of claimant.	No. of certificate.	Amount of certificate delivered.
D. M. Talmage, attorney	Seth Driggs	269	\$1,000 00
Do	do	270	1,000 00
Do	do	271	1,000 00
Do	do	272	1,000 00
Do	do	273	1,000 00
Do	do	274	1,000 00
Do	do	275	1,000 00
Do	do	276	1,000 00
Do	do	277	1,000 00
Do	do	278	1,000 00
Do	do	279	1,000 00
Do	do	280	1,000 00
Do	do	281	1,000 00
Do	do	282	1,000 00
Do	do	283	1,000 00
Do	do	284	1,000 00
Do	Clemencia R. de Willett	285	1,000 00
Do	do	286	2,820 00
Do	do	287	2,820 00
Do	do	288	2,820 00
Do	do	289	2,820 00
Do	do	290	2,820 00
Do	do	291	2,820 00
Do	do	292	2,820 00
Do	do	293	2,820 00
Do	do	294	2,820 00
Do	do	295	2,820 00
Do	do	296	2,820 00
Do	do	297	2,820 00
Do	do	298	2,820 00
Do	do	299	2,820 00
Do	do	300	2,820 00
Do	do	301	2,820 00
Do	do	302	2,820 00
Do	do	303	2,820 00
Do	do	304	2,820 00
Do	do	305	2,820 00
Do	do	306	2,820 00
Do	do	307	2,820 00
Do	do	308	2,820 00
Do	do	309	2,820 00
Do	do	310	2,820 00
Do	do	311	2,820 00
Do	do	312	2,820 00
Do	do	313	2,820 00
Do	do	314	2,820 00
Do	do	315	2,820 00
Do	do	316	2,820 00
Do	do	317	2,820 00
Do	do	318	2,820 00
Do	do	319	2,820 00
Do	do	320	2,820 00
Do	do	321	2,820 00
Do	do	322	2,820 00
Do	do	323	2,820 00
Do	do	324	2,820 00
Do	do	325	2,820 00
Do	do	326	2,820 00
Do	do	327	2,820 00
Do	do	328	2,820 00
Do	do	329	2,820 00
Do	do	330	2,820 00
Do	do	331	2,820 00
Do	do	332	2,820 00
Do	do	333	2,820 00
Do	do	334	2,820 00
Do	Jacob Idler, deceased	335	28,090 44 4-9
Do	do	336	28,090 44 4-9
Do	do	337	28,090 44 4-9
Do	do	338	28,090 44 4-9
Do	do	339	28,090 44 4-9
Do	do	340	28,090 44 4-9
Do	do	341	28,090 44 4-9
Do	do	342	28,090 44 4-9
Do	do	343	28,090 44 4-9
Do	Seth Driggs	344	904 00
Do	do	345	904 00
Do	Seth Driggs, assignee of the widow and heirs of Capt. John Clark, deceased.	346	25,500 00
Do	do	347	25,500 00

List of persons to whom certificates of award, &c.—Continued.

To whom certificates delivered.	Name of claimant.	No. of certificate.	Amount of certificate delivered.
D. M. Talmage, attorney.....	Seth Driggs, assignee of the widow and heirs of Capt. John Clark, deceased.	348	\$25, 500 00
Do	do	349	25, 500 00
Do	W. S. Miller	350	2, 875 00
Do	do	351	2, 875 00
Do	do	352	2, 875 00
Do	do	353	2, 875 00
Do	Seth Driggs	354	5, 000 00
Do	do	355	5, 000 00
Do	do	356	5, 000 00
Do	do	357	5, 000 00
Do	do	358	5, 000 00
Do	do	359	5, 000 00
Do	do	360	5, 000 00

List of persons to whom certificates have been delivered or transmitted by the Department of State at Washington, up to the 4th day of January, 1869, and the number and amount of each certificate so delivered or transferred.

To whom certificate delivered or transmitted.	Name of claimant.	No. of certificate.	Amount of certificate.
Narcisa de Hammer; transmitted to her at Caracas, care of E. C. Pruyn.	Narcisa de Hammer	38	\$2, 500 00
Do	do	39	2, 500 00
Do	do	40	2, 500 00
Do	do	41	2, 500 00
Do	do	42	2, 500 00
Do	do	43	2, 500 00
Do	do	44	2, 500 00
Do	do	45	2, 500 00
Do	do	46	2, 500 00
Do	do	47	2, 500 00
James H. Causten, attorney; delivered.....	Joseph Forrest, George Beale, and Daniel Delany.	143	1, 885 06
Do	do	144	1, 885 06
Do	do	145	1, 885 06
Do	Robert W. Gibbs.....	146	2, 172 45
Do	do	147	2, 172 45

Mr. Fish to Mr. Springer.

DEPARTMENT OF STATE,
Washington, July 27, 1876.

SIR: In compliance with your letter of the 26th instant, requesting to be sent to the room of the Committee on Foreign Affairs, in custody of a clerk, the original papers containing the testimony upon which certain claims were adjudicated before the United States and Venezuela Mixed Commission of 1866, I have the honor to inclose herewith the original papers specified in the accompanying list, and which are believed to comprise those referred to in your letter.

Should your committee desire to retain possession of any of the papers for a few days, the clerk is authorized to leave them with you, taking a receipt therefor.

The certificates of awards of the commission were issued to "bearer," and I have no means of knowing who are the present owners thereof.

I have the honor to be, sir, your obedient servant,

HAMILTON FISH.

Hon. WILLIAM M. SPRINGER,
House of Representatives.

E.

[House Ex. Doc. No. 208, Forty-seventh Congress, first session.]

Message from the President of the United States, transmitting a communication from the Secretary of State relative to the awards made against Venezuela by the mixed commission.

MAY 25, 1882.—Referred to the Committee on Foreign Affairs and ordered to be printed.

To the Senate and House of Representatives :

I transmit herewith a letter from the Secretary of State, concerning the awards made against Venezuela by the mixed commission under the convention of April 25, 1866. I earnestly invite the attention of Congress to this communication and the accompanying inclosures. In case neither house takes action upon it during the present Congress, I shall feel it my duty to direct that this prolonged discussion be definitely terminated by recognizing the absolute validity of all the awards.

CHESTER A. ARTHUR.

EXECUTIVE MANSION,
Washington, May 25, 1882.

To the President :

The Secretary of State has the honor to call the attention of the President to the subject of the awards made under the claims convention with Venezuela, concluded on the 25th April, 1866. The commission under this convention consisted of one member on the part of each government, and an umpire, and its seat was at Caracas. The awards were, by the terms of the convention, to be paid in equal annual payments, the first to be paid in six months from the date of the termination of the labors of the commission, the last within ten years from that date.

The first installment of ten per cent. became due on the 8th February, 1869. Instead of paying it, a chargé d'affaires from Venezuela presented his credentials at the Department of State on that day, and represented to Mr. Seward that there had been irregularities in the commission, cited especially three cases, and asked to have the entire awards set aside and a new commission ordered. He added that of the twenty-four awards made only seven would need revision.

The United States at first declined to listen to these charges until Venezuela should comply with the treaty by paying in the overdue installment. Being informed, however, by the United States minister at Caracas that Venezuela was really unable to pay its debts, but could pay a portion, Mr. Fish consented to receive that portion, and to refer the matter to Congress if Venezuela would formulate its charges and furnish proof.

In response to this invitation, Venezuela sent a special agent to Washington, who lodged in the Department of State a long paper purporting to contain the charges and proof which it was desired to have submitted. This paper was sent to Congress by the President in 1870. No action was taken upon it during that Congress. But in the next Congress, on February 15, 1873, an act was passed providing—

“That the adjudication of claims by the convention with Venezuela of April 25, 1866, pursuant to the terms of said convention, is hereby recognized as final and conclusive, and to be held as valid and subsisting against the Republic of Venezuela.”

In the report recommending the passage of this act, the House Committee on Foreign Affairs said that they had examined the testimony, and that it did not seem to them that the complaints were so clearly established as to cause the awards of the commission to be set aside.

In 1876 these claims were again the subject of Congressional inquiry and of a protracted investigation, which resulted in the passage of a resolution in the House requesting the President to withhold demands against Venezuela until March 4, 1877, and directing the Secretary of State not to make payments to holders of certificates until that date.

On the 20th of June, 1878, an act was passed repealing the act of February 25, 1873, with a proviso attached that nothing in the repealing act, or in the act repealed, should be construed as an expression of any opinion on the part of Congress in respect to the validity of any awards made under the convention of 1866, or as to the propriety of a negotiation by the Executive of a new convention in respect to the same.

Since the passage of the act of 1878, there has been no further legislation, although the subject has been more than once before Congress. The legal status of the claimants, and their relations to the Executive, are therefore governed solely by the convention of 1866, and the action of the commission under it.

In the course of the various investigations in Congress which have been had on this subject, two classes of objections have been raised against the proceedings of the commission in Venezuela.

The first affects all classes of claims, both those admitted and those not admitted by Venezuela. It affects the integrity of the American commissioner as between him and the claimants; but it does not affect the validity of the award as to any claims which are not contested by Venezuela.

Venezuela does not deny that seventeen of these claims were properly decided adversely to her. It is, however, asserted by the claimants that they have been improperly deprived of a portion of the certificates through a corrupt agency.

In the opinion of the Department of State, existing laws afford adequate remedies in the Federal and State courts for all such disputes about the ownership of property between citizens of the United States. But with the seven awards which are specifically objected to by Venezuela, the case is different.

The names of the claimants, and the objections made to the awards, are thus stated by the late Venezuelan minister in a letter to the Secretary of State dated December 24, 1878:

"Claim No. 7, Beales, Nobles & Garrison; amount awarded, \$250,000; wholly illegal and fraudulent. The contracts for the annulment of which damages were claimed were not made by the lawful Government of Venezuela. They were entered into by the authority of the dictator, General Paez, whose brief and revolutionary power was not recognized by Mr. Blow, then United States minister at Caracas, nor by your government. Moreover, the contracts contained a clause specifically providing that nothing comprised in either should ever be made the basis of international reclamation. And, finally, the award was secured by bribery and corruption.

"Claim No. 37, Seth Driggs, for the widow and heirs of Capt. John Clark, ships *Good Return* and *Medusa*; amount awarded \$102,000; wholly illegal and fraudulent. This claim had been once fully paid by the Venezuelan Government. United States Commissioner Hassaurek, in speaking of the acts out of which this claim arose, said, 'Capt. John Clark, not only in what he did, but also in the manner of doing it, violated the laws of his country, whose intervention he invokes, in order to reap the benefit of his piracy.'

"Claim No. 36, Seth Driggs, for denial of justice; amount awarded \$35,000. Driggs had a suit in the courts of Venezuela against the heirs of General Marino, and before any final decision thereon proceedings in the courts were discontinued and the case taken before the commission. The United States commissioner and the umpire could find no better reason upon which to base this award than the fact that it had been twelve years in court. My government regards this award as wholly without foundation in justice and equity.

"Claim No. 22, W. S. Miller, for injuries and losses; amount awarded, \$11,500; wholly illegal and fraudulent. The claimant was chastised by one Malansini, a naturalized citizen of the United States, for abducting his son. The commission being in session, Miller made a claim for personal injuries and losses on goods he pretended to have sold for less than their value, through fear of further violence from Malansini.

"Claim No. 3, William E. Willett, for damages sustained by the occupation of his store by government troops; amount awarded, \$141,000. This claim is excessive to the amount of about \$100,000. It is not disputed that the government occupied the store as alleged, and appropriated some of his property. The only point at issue was the amount of losses sustained and value of the property taken. To demonstrate how grossly this claim was exaggerated, it is only necessary to examine the particulars by which the amount allowed was made up. After allowing full value of invoice claimed, with freight, commission, insurance, custom duties, paid rent, &c., the sum of \$55,021.23 was added as prospective profits that the commission assumed claimant might have made by the sale of his goods.

"Claim No. 1, Jacob Idler, for war supplies furnished the United States of Colombia during their war for independence; amount awarded, \$252,814. Idler had a contract with Colombia to furnish war supplies. At the close of the war with Spain, a difference arose as to the amount due him. He then received what the government was willing to pay, reserving the right of process for balance claimed in the courts of the country.

"The United States of Colombia then embraced the territory of the three Republics of New Granada, Venezuela, and Ecuador. In the treaty of separation it was provided that debts contracted during the war of independence, and still unpaid, should be divided among the three governments in the following proportions: New Granada, 50 per cent.; Venezuela, 30 per cent.; and Ecuador, 20 per cent. Idler failed to collect anything from New Granada or Ecuador, under the joint commissions between those countries and the United States Government. His heirs then transferred their demands to Venezuela, sued the government, and obtained a judgment in the lower court. An appeal was taken, and the case remanded to the same court with orders to exclude certain testimony admitted at the first hearing. At this point the question was abandoned for twenty-five years. This is the case in which Mr. Talmadge was attorney, and received all the certificates of award.

"The Government of New Granada always claimed that Idler received more than was

justly due to him at the settlement, and refused to make further payment, successfully contesting all demands before the courts and mixed commission. It is maintained by my government that these claimants had no right to appeal to the commission until they had prosecuted their case to a final decision before the courts of the country, and that the claim was wholly without foundation in law or justice.

"Claim No. 11, Seth Driggs, for damages caused by his arrest and imprisonment; amount awarded, \$100,000. Mr. Driggs was accused of perjury and fraud, and was arrested by due process of law. It was alleged that in different localities he made affidavits over fictitious signatures, giving evidence to be used in support of his own claims. I transmit an original letter he wrote for this purpose, over the signature of Mr. Taylor; that it is in Driggs' handwriting may be easily verified by comparing it with other letters written by him, many of which are doubtless on file in the department.

"If Driggs was entitled to any compensation, the amount awarded was certainly excessive to the extent of at least two-thirds of the sum allowed. All the above claims were included in the corrupt combination between David M. Talmadge, Thomas Stillwell, and William P. Murray, as set forth in a former dispatch, by which from 50 to 60 per cent. of the certificates issued were withheld from the claimants for division among themselves, the umpire, and probably the Venezuelan commissioner sharing in part of the proceeds. Of this fact my government thinks the evidence heretofore submitted conclusive."

It will be observed that the objections rest upon the allegation that there was a corrupt bargain between the commissioner on the part of the United States, the umpire, and the agent of the claimants.

This charge has been often made, and often passed upon by committees of the House of Representatives.

In 1876 the majority of the Committee on Foreign Affairs reported that an investigation "in the opinion of your committee has demonstrated the truth and reasonableness of the allegations of Venezuela." One of the minority of the committee, in a separate report, said that he concurred in the conclusion reached by the committee in regard to the fraudulent character of the claims decided by the umpire, and in the disapproval of the conduct of the United States commissioner. Two other members of the minority declined to express an opinion upon the "findings, deductions, and propositions contained in the report."

In 1878 the same committee, in another Congress, reported to the House that there was "evidence tending to show that there was incompetency on the part of the commission, that some of the claims allowed were questionable in character, and that the proceedings were tainted with fraud and corruption." The minority reported that, in their opinion, "the charges of fraud have not been sustained." In 1881 the same committee, in still another Congress, reported to the House that the testimony conduces to prove that there was a corrupt understanding between parties by which one of them was to charge for his services in presenting the claims one-half of the amount allowed by the commission, and that the amount so charged should be divided, and the committee reported a bill referring the whole subject of the awards to the Court of Claims.

After so many and so decided authoritative expressions of opinion from representatives of one part of the legislative branch of the government, it seems impossible for the Executive, in its relations with a foreign power, to say that there is nothing in these transactions which ought to be inquired into. On the contrary, the honor of the country requires that everything of which Venezuela may rightfully complain should be investigated.

On the other hand, duty to our own citizens whose rights of property are questioned, demands that the inquiry should be limited to the points which Venezuela has a just right to assail.

Against the awards to which no exception has been taken, seventeen in number, Venezuela cannot, at this late day, rightfully interpose a complaint. They should stand as valid, and the holders of certificates which represent them will be paid from time to time their proportionate sums of amounts paid, or that may be paid by Venezuela, except so far as courts of competent authority in the United States having proper jurisdiction between the parties, may adjudicate otherwise upon their rights, or unless Congress shall direct to the contrary.

An examination of the charges formulated by Venezuela against the remaining seven awards shows that they are objected to for various reasons; as, for instance, that the party agreed that his claim was not to be the subject of an international reclamation; that the contracts were not made by the lawful Government of Venezuela; that there was no just foundation for the claim; that the claims were grossly exaggerated; that the claimant had not exhausted all his remedies in the local courts, &c. As all such defenses were open to Venezuela in the commission, the time for advancing them has now past. But the allegation that the commissioner or the umpire was induced to make these awards by corrupt combination with the claimants or their agents, is quite a different matter. The honor of the United States calls for an investigation of

this charge, and the claimants have no rights in the finality of an award which stands in the way of such an inquiry.

The power which creates an international commission, in the opinion of the Secretary of State, may create another to review it, and no citizen of either power can acquire a right of property which takes away that sovereign right.

If the claims were still held by the original owners, a new convention with Venezuela would be the simplest way of dealing with the subject. It happens, however, that these certificates are widely spread. Some may be, and probably are, in the hands of innocent holders. Under these circumstances a resort to a judicial tribunal becomes necessary, not only for the purpose of settling the rights of the United States as to Venezuela, but also for determining who are innocent holders of any of these certificates.

The Secretary of State recommends the passage of an act which shall direct the Court of Claims, upon the documentary evidence now in the Department of State, or printed in Congressional documents, and upon such other proof as may be submitted under rules made or to be made by the court, to hear and determine with or without counsel, as the court may decide, whether any, and if so, which, of the seven awards objected to by Venezuela, was obtained by fraud or corruption, giving to the case the earliest attention consistent with a proper examination of the papers. Such an act might further empower the Court of Claims, in case it shall decide that any of the said awards were obtained by fraud or corruption, to summon before it, by advertisement, all holders of certificates of such awards, and hear and determine on the evidence of the parties themselves, and on such other proof as may be offered under the rules of the court, whether the fraud or corruption was known or might have been known to the holder of the certificate, with the exercise of ordinary and reasonable care and diligence, and the actual cash price paid by the holder for the certificate, and to report the judgments to the Secretary of State, and that all such certificates not so proven before the Court of Claims shall be invalid.

Unless directed to the contrary, the Secretary of State would feel it his duty, in case any of such awards are found to have been obtained by fraud, to recommend entering into negotiations with Venezuela with a view of setting aside the awards thus obtained and having a re-examination of the claims, allowing innocent holders of the fraudulent certificates to take the place of the original claimants so far as claims may be allowed.

In case neither house takes action upon this matter during the present Congress, the Secretary of State will feel it his duty to counsel the President to direct that this prolonged discussion be definitely terminated by recognizing the absolute validity of all the awards. It is not thought that the Executive, unaided by judicial examination into the merits of this disputed case, should assume the responsibility of deciding adversely to citizens of the United States a question upon which different Congresses and different members of committees in the same Congress have reached such widely different conclusions.

In any event, unless we are misinformed as to the power of Venezuela to pay its debts, it is apprehended that the question, so far as it relates to the payment of the awards, is more theoretical than practical. The third article of the convention of 1866 provides that semi-annual interest shall be paid on the several sums awarded, at a rate of five per cent. per annum from the date of the termination of the labors of the commission.

The commission terminated its labors August 8, 1868. (For a list of awards see Inclosure 1.)

The interest on the undisputed awards up to May 1, 1882, was \$304,134.19; the interest on the disputed awards for the same period was \$525,970.82; total, \$830,105.01. The entire payment made by Venezuela during the same period amounted to \$352,470.01.

The disposition made of these payments is shown in the accompanying statement (Inclosure 2). These figures show that Venezuela not only has made no provision for the awards which it disputes, but has scarcely more than paid the interest on the awards which it admits, while principal and interest ought, by the terms of the convention, to have been paid more than three years ago. It is believed that this apparent want of good faith has been caused by inability and want of means. It is proper that the information regarding the foreign debt of Venezuela, derived from the archives of the Department of State, which induces this belief should be laid before Congress.

On the 29th July, 1864, France and Venezuela concluded a convention, by which it was agreed that Venezuela should pay France 6,000,000 francs in full of all claims, the payments to be secured by hypothecation of ten per cent. of the gross product of the custom-houses of Laguayra, Puerto Cabello, Maracaibo, and Ciudad Bolivar.

In 1866 claims conventions were made with Holland and with Denmark. Holland claims that the Dutch awards are secured by hypothecation of custom-house receipts, but Venezuela denies this. Next came the claims convention with the United States, followed by similar conventions with Spain, with England, and with Germany. The

result of it all is that Venezuela is burdened with a diplomatic debt of about \$5,000,000 in addition to its other obligations, and that some of the diplomatic creditors claim a preference over the others in the receipts derived from certain custom-houses.

In 1873 Venezuela enacted a law by which forty per cent. of the customs receipts were set aside for the creditors of the nation, thirteen one-hundredths of this forty per cent. being assigned to the diplomatic debt. The division of this thirteen one-hundredths was not made pro rata. In May, 1880, a further law was enacted making a different division of it, more favorable to the United States. The change has not been accepted by all the creditor governments. It has been the cause of a breach of diplomatic relations between France and Venezuela, and of a coldness which still continues.

For the information of Congress, a statement (Inclosure 3) is subjoined of the diplomatic debt of Venezuela as it was in July last, and of the monthly sums coming to the United States under the old division, and under the present one.

The long-continued and steadily-increasing default of Venezuela, and the apparent hopelessness of getting the claims paid without some radical change in the mode of payment, combine to make it desirable for the Executive to secure an expression of legislative purposes and wishes respecting this matter.

Respectfully submitted.

FREDK. T. FRELINGHUYSEN.

DEPARTMENT OF STATE,
Washington, May 25, 1882.

[Inclosure 1.]

A list of the awards made under the claims convention of April 25, 1866, between Venezuela and the United States.

A.—AWARDS BY THE COMMISSIONERS.

Docket number of the claim.	Name.	Amount.	Certificates.
6	José Castel	\$2,000 00	One certificate delivered to Castel for \$1,000. The other certificate has not appeared.
17	Oliver Taylor.....	1,742 63	Two certificates for \$871.31½ each, delivered to W. P. Murray for Thomas N. Stillwell, attorney in fact.
9	Amos B. Corwin	15,445 59	Ten certificates of \$2,500 each, delivered to W. P. Murray, attorney in fact of F. Aponté, executor.
4	Leonardo Peck	25,000 00	
16	Lorenzo H. Finn	10,000 00	
24	Narcissa de Hammer	50,000 00	Ten certificates of \$1,000 each to claimant. Ten certificates of \$2,500 to W. P. Murray, attorney in fact. Ten certificates of \$2,500 transmitted by the Department of State to her at Caracas.
25	Amelia de Brissot	35,000 00	Ten certificates of \$1,750 each to W. P. Murray, for himself and R. Palenzuela, attorneys in fact. A portion of these certificates eventually turn up in the estate of Mr. Stillwell. Certificates for the remaining \$17,500 were delivered by the Department to Thomas Hyde for Mrs. de Brissot.
26	Joseph Stackpole.....	15,000 00	Five certificates of \$1,500 each, delivered to W. P. Murray, attorney in fact. Certificates for the remainder, by the department, to Mr. Hyde for Mr. Stackpole.
27	Ralph Rawdon	100,000 00	Forty certificates of \$2,500 each to D. M. Talmage, attorney.
19	Seth Driggs	12,000 00	Twenty-five certificates of \$2,000, and one hundred of \$1,000 each, all to D. M. Talmage, attorney.
21	do	16,000 00	
32	do	22,000 00	
11	do	100,000 00	Three certificates of \$1,885.06, by department to James H. Causten, attorney. Two certificates of \$2,172.45 each to James H. Causten, attorney, by department. Six certificates of \$3,166.66 to W. P. Murray, attorney in fact. Six certificates of \$4,333.33½ to W. P. Murray, attorney in fact.
14	Forest, Beale & Delaney	5,655 18	
43	Robert W. Gibbs	4,344 90	
29	Executors of John Donnell ..	19,000 00	
30	Hollins, &c., executors of F. Hollins.	26,000 00	
		459,188 30	

A list of the awards made under the claims convention of April 52, 1866, &c.—Continued

B.—AWARDS BY THE ARBITRATORS.

Docket number of the claim.	Name.	Amount.	Certificates.
7	Beales, Nobles & Garrison ..	\$250,000 00	Twenty-five certificates of \$10,000 each delivered to W. P. Murray, attorney in fact.
3	William E. Willet.....	141,000 00	Fifty certificates of \$2,820 each, delivered to D. M. Talmage, attorney.
1	Jacob Idler	252,814 00	Nine certificates of \$28,090.44½ each, delivered to D. M. Talmage, attorney.
20	Seth Driggs.....	1,808 00	Two certificates of \$904 each, delivered to D. M. Talmage, attorney.
22	William S. Miller	11,500 00	Four certificates of \$2,875 each, delivered to D. M. Talmage, attorney.
36	Seth Driggs.....	35,000 00	Seven certificates of \$5,000 each, delivered to D. M. Talmage, attorney.
37	Seth Driggs, attorney for widow and heirs of Capt. John Clark.	120,000 00	Four certificates of \$25,500 each, delivered to D. M. Talmage, attorney.
		794,122 00	

[Inclosure 2.]

Statement of the payments made by Venezuela upon the awards, the distribution of the sums paid, and the amount now on hand in the Department of State.

FIRST INSTALLMENT.

A.—Amount received from Venezuela up to June, 1871.....	\$97,812 12
Paid out first installment June, 1871.....	82,382 75
Balance.....	15,429 37

SECOND INSTALLMENT.

B. -Received from Venezuela between June, 1871, and May, 1876	\$76,119 58
Interest earned up to May, 1876	27,632 08
Total	103,751 66
C.—Paid out on installment of 8 per cent. in May, 1876	94,191 62
Balance.....	9,560 04
D.—Amount received from Venezuela since payment of second installment	178,538 31
Which, with accumulation of interest and advance in bonds, leaves now on hand	221,065 89

[Inclosure 3.]

A statement showing the diplomatic debt of Venezuela and the monthly payments on it.

Country.	Total debt.	Monthly payment, July 29, 1873, to May 1, 1880.	Monthly payment since May 1, 1880.	Debt adjusted.
	<i>Francs.</i>	<i>Francs.</i>	<i>Francs.</i>	
Spain	7,704,457. 64	13,980. 00	25,949. 94	May 10, 1874.
United States of America.....	5,847,163. 32	13,980. 00	19,694. 25	Convention, 1866.
Holland.....	4,190,906. 56	7,220. 00	14,115. 70	1866.
France	3,455,155. 60	28,275. 00	11,637. 55	See "Report."
England	2,192,835. 24	10,020. 00	7,385. 84	June 14, 1878.
Germany	200,000. 00	4,000. 00	673. 63	May 24, 1877.
Denmark.....	161,241. 16	881. 25	543. 09	March 17, 1866.

F.

The following extracts from the minutes of proceedings of the mixed commission on Venezuelan claims, designated by the respective counsel, were received from the Department of State and ordered to be inserted in the record :

SEPTEMBER 12, 1867.

Commissioners met at 3 p. m. David M. Talmage, commissioner of the United States, submitted the following as his objections to the appointment of any one of the diplomatic corps resident in Caracas for umpire, as proposed by General Guzman Blanco at the former meeting, namely :

"I, as commissioner of the United States, cannot consent to the appointment of any one of the four diplomatic representatives, *as such*, proposed by the commissioner of the Republic of Venezuela, for the following reasons, viz: Because I conceive the whole tenor, letter, and spirit of the treaty, and previous negotiations and acts of the representatives of the United States relative thereto, as well as the government itself, opposed to the interference of any foreign government or diplomatic representative thereof, other than that authorized in the first article of the convention. In regard to Mr. Rolandus, proposed by me for umpire, the foregoing objections are not applicable, he being without diplomatic character, and therefore eligible to the position; no reasonable objection has been made or reason assigned why he should not be appointed, excepting a disinclination, based, as asserted, upon the dictation or instructions to the contrary, of the Government of Venezuela, who, instead, desire the appointment of a diplomatic representative of a foreign power, which I apprehend to be entirely inadmissible by terms of convention. Give me any good reason why Mr. Rolandus should not be appointed umpire, and I shall withdraw his name and endeavor to agree upon some other person."

To which General Guzman Blanco, commissioner of Venezuela, submitted the following contra memorandum as his reply :

1st. "Mr. D. M. Talmage, commissioner of the United States, believes that the nomination of a member of the diplomatic corps resident in Caracas would be contrary to the spirit of the treaty. The commissioner of Venezuela, General Guzman Blanco, on the contrary, believes, that as their respective governments have agreed, in case the commission should not agree, to refer to one of the members of the diplomatic corps resident in Washington, the commissioners of those same governments ought to follow up their spirit, endeavoring in their selection of umpire to obtain one of the diplomatic body resident in Caracas. Mr. D. M. Talmage, commissioner of the United States, proposes Mr. Rolandus, because he does not belong to the diplomatic corps resident in Caracas, and possesses all the other qualities which can be required for an impartial and intelligent judgment. The commissioner of the republic of Venezuela, General Guzman Blanco, far from having anything to object to Mr. Rolandus on account of his knowledge and uprightness, feels pleasure in acknowledging here that he possesses all the virtues that constitute a completely honorable gentleman; but believes that he cannot prefer him as umpire to any of the diplomatic corps resident in Caracas, because that would be wanting to the spirit of the treaty which creates this Mixed Commission, and which counsels the election of a diplomat in Caracas, inasmuch as that in case of disagreement both governments have chosen a diplomat in Washington, and because any other proceeding would be equivalent to denying to the diplomatic body of Caracas a demonstration of confidence and consideration which has already been shown to the diplomatic corps of Washington, and also because if the commissioner of the Republic of Venezuela did not insist upon the order of ideas which he has advanced, the Government of Venezuela would remain, his country would remain, as of an inferior condition, in this arrangement, than the Government of the United States, than the country of Mr. Talmage. As regards the observation which Mr. Talmage lets fall, regarding the right which the Government of Venezuela may have to interfere now, in the nomination of an umpire, General Guzman Blanco has nothing to answer, because he has never sustained or combated such right, not considering it pertinent to the discussion.

What the commissioner of Venezuela has said to the commissioner of the United States is, that his instructions prescribe the proposing of a member of the diplomatic corps in preference to any other person, and the right which his government may have to communicate this or any other instruction cannot be thought to be what Mr. Talmage aspires to discuss. I should be pleased if, after all the verbal discussion between the two commissioners, this contra-memorandum might persuade the commissioner of North America of all the legality, prudence, and foresight attaching to the nomination of a member of the diplomatic corps as umpire in the mixed commission which is formed by both; but if, unhappily, this point should not be gained the commissioner of Venezuela thinks the time has arrived to extend protocol of the matter of the present session, with copy of the arguments of each commissioner, in which may be concentrated the pros and cons which have taken place on the nomination of umpire, and

that Mr. D. M. Talmage, commissioner of the United States, may pass to his government a copy of the protocol, and that General Guzman Blanco, commissioner of Venezuela, may pass another copy to the Government of Venezuela, and consider as terminated, for the present at least, the labors of the mixed commission. David M. Talmage, commissioner of the United States, offered to make his remarks upon this contra-memorandum at the next meeting, adjourned to the 13th instant, at 3 p. m., for that purpose.

DAVID M. TALMAGE,

Commissioner of United States of America.

ALFRED ALDERSON,

Secretary.

SEPTEMBER 13, 1867.

The commissioners met at 3 p. m. The discussion turned upon whether a protocol should be made of the matter, it having been, in the opinion of General Guzman Blanco, sufficiently discussed in the many meetings already had, and the time arrived in which to render account of proceedings and present copy of the protocol to the respective governments; that the commissioners could not agree as to umpire. Mr. D. M. Talmage differed in opinion, and objected to this view and to making protocol, stating this is not the proper time or proper course, under the circumstances; that the point at issue was not really disagreement as to umpire, but as to the interpretation of the treaty itself; that as to the remarks presented in writing by General Guzman Blanco, at last meeting, he (the commissioner of the United States) had accepted of the same as arguments only in the line of discussion, subject to his reply, and therefore, as understood, submitted the same at this time, with request that it be entered in full on the minutes. General Guzman Blanco objected, and refused to consider the same in meeting, or admit of any further discussion, stating that he considered discussion ended, and that in the future he circumscribed himself to the extending of a protocol; that he should communicate his position at the present juncture to his government, and, pending instructions, declined further conference. Mr. D. M. Talmage, as commissioner of the United States, protested against such action, and expressed his surprise at the course taken by the commissioner of Venezuela in thus dismissing the discussions and meetings of the commission.

Adjourned.

DAVID M. TALMAGE,

Commissioner of the United States of America.

Remarks of D. M. Talmage, above referred to:

"The remarks or arguments of commissioner of Venezuela presented yesterday ends with the insinuation that in case I am not convinced thereby, and do not agree to appoint as umpire one of the diplomatic corps resident in Caracas, that the question be referred to our respective governments. I beg to insinuate to said commissioner that the real point of disagreement between the commissioners at this moment is not the nomination of an umpire, but the interpretation of an article in the treaty that seems to me so very explicit, that I cannot conceive how matter can be found for discussion between two commissioners, actuated by a spirit of amity and good will. The first article says: 'The commissioners shall then proceed to appoint an umpire to decide upon any case or cases concerning which they may disagree, or upon any point of difference that may arise in the course of their proceedings,' &c. I ask how is it possible to construe such explicit terms to mean that diplomatic representatives at Caracas were exclusively designated or even desirable for umpire?

"The said commissioner, General Guzman Blanco, argues that because in a certain case (possible), *the naming of umpire* is, by the same article, referred to the ambassador of Switzerland or Russia in Washington, that therefore the umpire *should be* a member of the diplomatic corps at Caracas—the logic of which reasoning I cannot comprehend. On the contrary, the non-designation of such in the first instance, and the expressed designation and design in the second instance, show the inadmissibility of such conclusion, and that the high contracting parties jointly made selection of the aforesaid ambassadors at Washington for a specific purpose only, denying to them even any participation whatever in the business or determinations of the commission; and furthermore, how possible that the commissioners be expected to select a member of the diplomatic corps in Caracas, representative of a foreign power, unless expressly authorized, especially as only in the second instance aforesaid (and then only in special emergency) the two governments consented to accept (for a purpose clearly defined) the good offices of one of the foreign ambassadors in Washington, a prerogative clearly reserved to themselves. Again, why should the commissioners pretend to a higher knowledge of what is due to diplomatic representatives than the contracting parties themselves saw fit to express in the terms of the convention, or to question their sagacity and decorum in not mentioning any of them specially for the office of umpire?

"This matter would not assume such particular importance, if the personal opinion of the commissioners only was involved, but being a matter in which (as the commis-

sioner states) the Government of Venezuela have prescribed to him, in and as part of his instructions, it assumes a very grave character, inconsistent and in contradistinction with the opinion entertained by the United States, as to the faithful performance of the treaty on the part of Venezuela. It would be superfluous in me to remind one possessing the intelligence and discrimination of General A. Guzman Blanco, commissioner on the part of Venezuela, of the disastrous consequences likely to result from an abrupt termination of our labors as a commission, upon the question at issue and the still insisting on the appointment of one of the diplomatic corps resident in Caracas as umpire. I trust that in offering these remarks, to which a sense of duty prompts me at this juncture, I shall not be found to have in any degree transgressed the limits of amicable discussion, and beg leave to insinuate to General A. Guzman Blanco, commissioner, if it would not be best, that he should in the present emergency submit this matter to his government, not as a question of disagreement in the appointment of umpire, but a question as to the faithful performance of a treaty.

“DAVID M. TALMAGE,

“Commissioner of the United States of America.

“ALFRED ALDERSON, *Secretary.*”

OCTOBER 7, 1867.

Whereas, from motives of public necessity, General Antonio Guzman Blanco had to absent himself from the capital, and inasmuch as the Government of Venezuela has appointed Mr. Francisco Conde to replace him in the mixed commission and to continue the labors of the same, pursuant to the convention celebrated between the United States of America and the Republic of Venezuela April 25, 1866; and the said Francisco Conde, duly commissioned and authorized as aforesaid, has given copy of such full power to David M. Talmage, commissioner of the United States of America, and has taken the prescribed oath according to article 1 of said convention; therefore the said commissioners met this 7th day of October, 1867 (having had other preliminary meetings on the days of September 30, and 1st and 4th and 5th of present month), for the purpose (if possible) of agreeing to the election of an umpire. Mr. Talmage declined to propose other person than T. O. G. Rolandus, consul-general of Netherlands, who was not accepted by the former commissioner of Venezuela nor by the present one. Mr. Francisco Conde, commissioner of Venezuela, at once removed cause of disagreement between former commissioner of Venezuela and commissioner of the United States (former commissioner sustaining that one of the foreign ministers resident in Caracas was especially designated to be umpire) by declaring that the election was free, and consequently would not limit himself either to propose or accept diplomatic agents, but would admit as eligible any other person qualified, and, in proof of such, proposed any one of the following persons, viz, Dr. Nicarion Borges, Dr. Mariano de Bricino, Sic'do Juan Pablo Rojas Paul, Dr. Angle M'a Alamo, Dr. Wenceslao Morutia, General Francisco Megia, and General Gabriel Ochoa. None of these were accepted by Mr. Talmage, commissioner of the United States, he believing it was more convenient that the umpire should be other than a citizen of Venezuela or the United States.

The commissioner of Venezuela remarked that the foreign ministers possessed such quality, and also that of being more independent on account of their social position. The commissioner of the United States found other motives and reasons for not accepting any of them—reasons which were combated by the commissioner of Venezuela; but his arguments did not modify or alter the judgment of the commissioner of the United States, who believed an agreement between the commissioners as to selection of umpire now impossible, as he manifested; suggesting, therefore, to Mr. Conde the idea of making the corresponding declaration, notwithstanding the observations of Mr. Conde, and among them that he thought it would be more convenient to the interests of the claimants that the commissioners should agree in the selection of an umpire, and to that effect then proposing anew the ministers of Great Britain and Spain, and also Mr. William Stirmp, consul-general of Denmark, none of whom were accepted by Mr. Talmage, who remarked that in virtue of so much time consumed on his part in endeavoring to agree upon an umpire, and of his determination not to accept, now, any person that may be proposed, his desire is that the designation of an umpire be submitted to the ambassador or minister of Switzerland or Russia accredited at Washington, as provided by the convention. In consequence of all of which the said commissioners declare that they have not been able to agree in the selection of an umpire, and the case arrived provided in art. 1; and pending the appointment therein prescribed, the meetings of the Mixed Commission are adjourned, and agree to forward copy of this proceeding to their respective governments, with note signed by both commissioners.

DAVID M. TALMAGE,

Commissioner of the United States of America.

FRANCISCO CONDE,

Comisionado Venezolano.

G.

[Forty-seventh Congress, first session. H. R., 3159.]

IN THE HOUSE OF REPRESENTATIVES, JANUARY 16, 1882.

Read twice, referred to the Committee on Foreign Affairs, and ordered to be printed.

Mr. SPRINGER introduced the following bill:

A BILL in relation to the Venezuela awards.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the awards of the Mixed Commission organized under the treaty of April twenty-fifth, eighteen hundred and sixty-six, between the United States and Venezuela, be, and they are hereby, referred to the Court of Claims, which is hereby authorized and required to examine all the testimony touching said awards now on file in the Department of State, and to hear and receive, under regulations to be prescribed by said court, such further legal testimony as may be produced in said court impeaching or confirming said awards prior to the first day of January, eighteen hundred and eighty-three.

SEC. 2. That upon such examination and hearing said court shall determine which of said awards are valid, in whole or in part, and which are not valid, and shall render judgment accordingly.

SEC. 3. That there shall be no appeal from such judgment. Distribution of the moneys already received or hereafter received by the United States from Venezuela on account of said awards shall be suspended until after the rendition of such judgment, and such moneys shall then be applied pro rata upon the awards held valid by such judgment; and when they are paid in full as far as held valid no further claim shall be made by the United States in respect of the awards held to be invalid.

SEC. 4. That if no new testimony be produced in reference to any of said awards prior to January first, eighteen hundred and eighty-three, its validity shall be determined by said court upon the testimony on file as aforesaid in the Department of State.

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LOSS OF STEAMER JEANNETTE.

JULY 31, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. B. W. HARRIS, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany H. Res. 278.]

The Committee on Naval Affairs, to whom was referred the joint resolution, submitted by Mr. Washburn, directing the Secretary of the Navy to convene a court of inquiry to investigate the circumstances of the loss of the exploring steamer Jeannette, submit the following report:

The committee believe that the whole history of this expedition and the loss of the vessel, together with the conduct and suffering of the officers and men composing the expedition should, as soon as may be, be officially ascertained and made a matter of record for the benefit of future explorers; and as a matter of public information they recommend the adoption of the joint resolution.

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CHIRIQUI COALING STATIONS.

JULY 31, 1882.—Laid on the table and ordered to be printed.

Mr. B. W. HARRIS, from the Committee on Naval Affairs, submitted the following

R E P O R T:

The Committee on Naval Affairs, to whom was referred the resolution calling on the Secretary of the Navy for papers and correspondence relative to the Chiriqui coaling stations, submit the following report:

In obedience to a resolution of the House, adopted on the motion of Mr. King, of Louisiana, the papers and correspondence in relation to the purchase of the Chiriqui coaling stations were transmitted to the House by the Secretary of the Navy, and have been printed. The committee, upon an examination of the subject, do not discover any reason why the power now vested by law in the Secretary of the Navy over the subject of the purchase of coaling stations on the Isthmus should be withdrawn. He is not likely to purchase them unless they are required by sound public policy, nor until a perfect title can be secured.

In view of the possible future importance of the Isthmus in its relation to commerce, it may become of the utmost importance that coaling or naval stations should be secured by the United States. We think the discretion over the subject now vested in the Executive Department should not be taken away, and desire to be discharged from the further consideration of the subject, and recommend that said resolution do lie upon the table.

JOHN ELLIS.

JULY 31, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. TAYLOR, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 6876.]

*The Committee on Claims, having had the memorial of John Ellis under consideration, beg leave to report as follows: **

That John Ellis, by the appointment of the Doorkeeper, acted as messenger to the House and its committees, in the Forty-fifth Congress, for the period of three months and a half, from October 15, 1877, to the 1st day of February, 1878, for which he has received no pay because, for some reason unknown to your committee, his name was not put upon the proper rolls. Your committee, therefore, report a bill herewith, and recommend its passage.

○

JOSEPH M. CUMMINGS AND OTHERS.

JULY 31, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CROWLEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 6877.]

The Committee on Claims, to whom was referred the bill (H. R. 4734) for the relief of Joseph M. Cummings, Hamilton I. Miller, and William McRoberts, have had the same under consideration, and beg leave to submit the following report:

The claim has been carefully investigated by the Senate Committee on Claims in the present Congress, and also by your committee, who have concluded to adopt as their own the report made to the Senate by Mr. Fair, of the Senate Claims Committee of the present Congress.

We therefore report the accompanying bill as a substitute for the one referred to your committee (H. R. 4734), and recommend its passage.

We annex hereto Senator Fair's report:

The Committee on Claims, to whom was referred bill S. 1368, have had the same under consideration, and beg leave to submit the following report:

Messrs. Joseph M. Cummings, Hamilton I. Miller, and William McRoberts were engaged in business in New York City in 1867, under the firm name of Joseph M. Cummings & Co., as commission merchants and importers, doing a large and extensive business of over three million dollars per annum.

In September, 1867, Joshua F. Bailey, collector of internal revenue for the district in which New York City is located, seized the warehouses, books, papers, and stock; in fact, everything belonging to the firm; most of the goods being in United States bonded warehouses and in charge of an officer of the government.

Collector Bailey did not make any specific charge against the firm, but made a general charge of fraud. Immediately on the seizure being made, Messrs. Cummings & Co. made a protest against the same and demanded an investigation. Bailey informed them that the matter would be attended to, and placed a number of officers in charge of the warehouses and refused to allow Cummings & Co. to transact any business.

Mr. Cummings, not receiving any satisfaction from Collector Bailey, came to Washington and saw the Commissioner of Internal Revenue, and desired to know what the charges were against his firm. The Commissioner informed him that there were no charges on file in the department against the firm, and ordered Sheridan Shook, who had in the mean time been appointed to succeed Bailey as collector, the latter having been suspended, to make an investigation.

A thorough examination was made, in pursuance of that order, by a committee consisting of one officer, Mr. Appel, from the department at Washington, and Messrs. Palmer and Johnston, officers connected with the internal-revenue department at New York. Their affidavits, which are on file with the papers in this case, and which have been carefully examined and considered by your committee, show that in every particular the goods, &c., in the warehouses corresponded with their books, and they reported to the Commissioner that they were unable to find anything wrong, and that there had been no fraud on the part of Messrs. Cummings & Co.

Some time after, Mr. Bailey still insisting something was wrong, and still holding Messrs. Cummings & Co.'s goods and books under seizure, another examination was made by order of the Commissioner.

A thorough and exhaustive examination was made, a United States gauger was called in, and every package and barrel examined, and this second examination resulted exactly as the first one, and Messrs. Cummings & Co. were entirely exonerated.

An order was issued to release the goods, &c., from seizure, and turn them over to Cummings & Co.

These investigations extended over a period of about six months, entirely destroyed Messrs. Cummings & Co.'s business, the value of the goods seized had depreciated very much in price, and they were compelled to realize on them at a great loss, and they were completely ruined.

Contracts for the delivery of goods and for export that they had made they were unable to fulfill, and they were compelled to fail. Previous to this their credit was very high, having a large bank account and doing an extensive and lucrative business.

At the time of the seizure they had contracts outstanding which, if they could have had possession of the goods in the warehouses, would, they claim, have realized them a profit of over \$200,000. From the evidence before the committee it would seem that Bailey's action in making the seizure was for the purpose of extorting money from Cummings & Co., and on their commencing proceedings against him in the courts he fled the country and has not since returned.

Mr. Cummings sets forth in an affidavit that the reason that himself and copartners allowed the time prescribed by law to pass in which to present their claim for investigation and adjudication to the Court of Claims is, that when their property was first seized the firm consulted Hon. Ethan Allen, a reputable lawyer of New York, who advised them first to institute legal proceedings against Joshua F. Bailey, the collector, for damages for the unlawful seizure, and thus establish by verdict of a jury the honesty of petitioners and the illegal and unwarrantable seizure of their property.

That, relying upon the said advice, and believing that Bailey would return, and being informed by Mr. Cornelius Runkle, said Bailey's attorney, that Bailey would return and meet all charges against him, they allowed valuable time to slip by.

In the mean time, owing to the seizure, the business of the firm was entirely broken up and destroyed, and they were obliged to and did make an assignment for the benefit of their creditors, and they were left destitute and penniless, and without any resources to institute any investigation or prosecute any claim through a suit at law.

Besides this, the deponent believed that no statute of limitations could run so long as Bailey was absent from this country.

Your committee have examined all the papers and affidavits, most of which are made by sworn officers of the government, and are of the opinion that Messrs. Cummings & Co. were unjustly dealt with, that there was no ground for the seizure, that it was illegal, and that they should be allowed to present their claim to the Court of Claims for adjudication thereon, and they therefore report back the bill and recommend its passage, with the following amendments:

In line 8 of the bill, after the words "empowered to," strike out the words "bring a suit in said court against the United States for," and insert in lieu thereof the words, *to apply by petition to said court for the assessment of the actual damage sustained by them from.*

In line 16, after the word "officers," insert: *The United States shall appear to defend against said petition, and either party may appeal to the Supreme Court, as in ordinary cases against the United States in said court.*

In line 22, after the word "business," insert, *assessing the same on the same principles as if the suit had been against said Bailey, but allowing no exemplary or vindictive damages.*

FRANCIS KILBURN.

JULY 31, 1832.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. A. HERR SMITH, from the Committee on War Claims, submitted the following

R E P O R T :

[To accompany bill H. R. 6878.]

The Committee on War Claims, to whom was referred the petition of Francis Kilburn, report as follows:

It appears, from the records of the Adjutant-General's Office, that claimant was enrolled on the 15th day of May, 1861, in Company K, Fifth Regiment of Pennsylvania Reserve Volunteers, to serve three years or during the war, and was mustered into service as a private on the 21st day of June, 1861; detailed February 18, 1862, on western gunboat service by order of General McCall; that he was honorably discharged from the service of the United States as a private of Company K, Fifth Regiment Pennsylvania Reserve Volunteers, at Cairo, Ill., on the 17th day of November, 1862, by reason of injuries and disability contracted in the line of duty; that he asks additional bounty of \$100 under the act of July 28, 1866.

It appears, from the proof submitted, that his claim was rejected by the Second Auditor of the Treasury on the ground that soldiers transferred to the Navy are not entitled to bounty under the act of July 28, 1866.

The act of July 28, 1866, section 12, provides—

That each and every soldier who enlisted into the Army of the United States after the 19th day of April, 1861, for a period of not less than three years, and having served the time of his enlistment, has been honorably discharged, and who has received, or who is entitled to receive, from the United States, under existing laws, a bounty of \$100, and no more, and any such soldier enlisted for not less than three years who has been honorably discharged on account of wounds received in the line of duty, and the widow, minor children, or parents, in the order named, of any such soldier who died in the service of the United States, or of disease or wounds contracted while in the service and in the line of duty, shall be paid the additional bounty of \$100 hereby authorized.

The proof shows that the claimant was not transferred to the Navy, but was detailed for temporary duty with Mississippi River flotilla. The statement of the claimant's service shows that he fulfilled all the requirements of the law, and it is difficult to find any reason why he is not entitled to the additional bounty of \$100.

The committee are of opinion that it would not comport with the dignity of the government thus to break faith with the gallant men

who in that hour of gloom stood forth to peril their lives for their country.

Under the circumstances the committee have deemed it just to report the accompanying bill for the claimant's relief, and recommend its passage.

○

WILLIAM W. SUTHARD.

JULY 31, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. A. HERR SMITH, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 6879.]

The Committee on War Claims, to whom was referred the bill (H. R. 1781) for the relief of William W. Suthard, submit the following report:

It is alleged that in the years 1862 and 1863 troops of the United States, commanded by Generals Banks and Buford, took from the claimant quartermaster's stores valued at \$1,160, for which he has not been paid.

The claimant made no complaint to the War Department nor asked any relief from that quarter; nor did he file his claim before the Commissioners of Claims; nor did he make any claim at all until sixteen years after his loss. This long delay he explains in the usual way, by alleging that his papers were filed with his attorney, who failed to present them to the proper tribunal.

The very statement of his case is vague and uncertain, and the proof would not warrant the committee in passing it.

It seems to your committee that an investigation by the Secretary of War, or under his direction, is a matter of necessity before intelligent action can be had upon this case. The committee desire the benefit of such proof outside of the *ex parte* statements of the petitioner.

The committee therefore report herewith a bill conferring power upon the Secretary of War to have the case investigated through the Quartermaster's Department, and to report the result, with his recommendation thereon, to Congress, for its action in the premises.

HEIRS AT LAW OF WILLIAM R. DOWNING, DECEASED.

JULY 31, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. A. HERR SMITH, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 6880.]

The Committee on War Claims, to whom was referred the bill (H. R. 1508) for the relief of the heirs at law of William R. Downing, deceased, submit the following report:

The facts out of which this claim for relief arises will be found stated in Senate report of the Committee on Military Affairs, No. 269, first session Forty-seventh Congress, a copy of which is hereto appended.

The committee adopt the said report as their own, and report the accompanying bill as a substitute for the bill H. R. 1508, and recommend its passage.

The Committee on Military Affairs, to whom was referred the bill (S. 1340) for the relief of the heirs at law of William R. Downing, deceased, late captain and assistant quartermaster of the United States Volunteers, having carefully considered the same, respectfully report:

William R. Downing was a farmer, living on his farm near Downingtown (a village named after his family), in Chester County, Pennsylvania, when the war broke out. He had served in the State legislature and in other positions of trust and honor, and was universally esteemed to be an upright and honorable citizen.

At the outbreak of the rebellion he was willing to render any aid in his power to the government. He was regarded as a good judge of horses, and perhaps this trait of his character led to his being tendered the appointment of assistant quartermaster. While thoroughly honest and generally intelligent, subsequent events proved that he lacked in one of the essential qualifications for his office—an aptitude for accounts. In private life he had never experienced the necessity of keeping accounts, or an accurate record of his receipts and expenditures, and it was very difficult for him to learn the absolute necessity of doing so in his official position. The complications in his transactions with the government resulted from a want of this kind of knowledge, and the present bill is intended to relieve his heirs from the consequences of the confusion of his accounts.

In 1861 Captain Downing was stationed at Wheeling, W. Va., where he continued until the fall of 1863. During this period of time he purchased large quantities of quartermaster stores for the government, and relied wholly upon his clerks to keep his accounts. In some instances he was unfortunate in the choice of clerks, for the lack of method in keeping the accounts of his office soon showed itself.

A court of inquiry was ordered to assemble at Wheeling, W. Va., to investigate the condition of his accounts with the government. The officers detailed by Secretary Stanton for that duty were men of the highest character.

The president was Captain Rodgers, of Maryland, a gentleman well known; Colonel Campbell, of Pennsylvania, who was a member of the Forty-fifth Congress, and

the colonel of the First West Virginia Regiment, who fell, shortly after the court closed its labors, at Falling Waters, at the head of his command.

The investigation of these gentlemen was searching and thorough, and they reported to the War Department that they were completely satisfied, by their investigation, that Captain Downing was scrupulously honest and honorable in all his transactions, and had an eye single to the best interests of the government, but that, by reason of his early habits, he had never appreciated the value of accurate daily accounts, and that this most important of his official duties devolved upon his clerks to too great an extent; and that the misunderstanding as to his accounts had wholly arisen from this cause. They also expressed the opinion that, in consequence of this inaptitude, in spite of his zeal and integrity, it would be to his advantage and the advantage of the government that he should retire from the service. They reported also, however, that every contract he had made should be completed, and every debt he had contracted should be paid in full.

This finding was carefully reviewed by Judge-Advocate-General Holt and by Secretary Stanton, in person, and by both of them fully approved by their written indorsements thereon, and the indebtedness where judgment had been suspended was ordered to be fully and promptly paid, thus vindicating Captain Downing in the fullest possible manner. The judgment which the court of inquiry formed of the character of Captain Downing and of his capacity corresponded with the opinion entertained of him by his neighbors and acquaintances at his home. He was honest, but he was not intelligent in the nature of accounts, and he tendered his resignation soon after the report of the court, which was accepted. Captain Downing returned to his home with an undoubted conviction that the government was indebted to him to the extent of several thousand dollars, and he could not be seriously impressed with the idea that there would be any difficulty in furnishing the proof of it. He seemed to believe that the accounts were kept at Washington with such accuracy that any omission on his part would be supplied by the accounting officers in the War Department. In this faith he lived for several years, and at his death his accounts were still unsettled, and his securities were informed that the balance appearing against him was about \$12,000. Efforts have been constantly made since to discover the ground for this discrepancy, and with considerable success. The balance has been reduced about \$6,000 from time to time by corrections of errors and discoveries of credits until, at present, according to the accounts in the War Department, there is due by him the sum of \$6,242.22. In the investigation of the accounts by the accounting officers in the Quartermaster's Department omissions of credits and debits seemed to exist indiscriminately. The manner in which Captain Downing kept his accounts is well stated in a letter of the Hon. A. M. Gangewer, Acting Auditor, dated May 28, 1873, and addressed to the Second Comptroller of the Treasury. In that letter it is said:

"I find Captain Downing made heavy purchases of horses and other property for the benefit of the public service, and while I find no evidence of fraudulent intent in any of his papers, yet many of them were irregular and imperfect, and it would appear probable he was in the habit of giving but little if any attention to the preparation of his papers or the keeping of his accounts; hence great difficulty was encountered on their examination and adjustment, which will appear more fully, perhaps, from the fact that in his last account current (dated November 30, 1864) he claimed a balance of \$1,150 as due himself; and although, on settlement of the accounts of R. E. Clary, brevet major-general, United States Army, that Captain Downing receipted to him for the sum of \$10,000, which Captain Downing failed to debit himself with, yet, by reason of sundry credits which it was found he was entitled to, but for which he neglected to take credit on his accounts current, the balance found due the United States on the last settlement of his accounts is \$6,242.22.

"I have spared neither labor nor pains in the thorough examination of his accounts, as well as the accounts of such officers as it was found had transactions with him, with the view of giving Captain Downing the benefit of every disbursement or transfer made by him, and find him indebted to the United States in the sum of \$6,242.22 as above mentioned. From the fact that it has been found he was entitled to credits in addition to those claimed by him, it would appear reasonable to presume he had other accounts to render, but possibly was unable to render them by reason of the loss or destruction of papers; and as the papers presented by him showed a balance due him (by reason of having neglected to debit himself with the amount received from General Clary, as heretofore stated), he probably believed his accounts were correct, although he did not claim in his accounts to have advanced any private funds for the benefit of the public service."

It is perfectly obvious, from the nature of these accounts, that no intention existed to claim credits and to ignore debits, for the number of credits omitted is as great as the number of debits.

In pursuing the investigation of these accounts in the department, it was found that on the 3d of July, 1862, Captain Downing had received from Col. R. E. Clary, assistant quartermaster, \$10,000, with which he charged himself, but for the disbursement

of which he claimed no credit. Before the death of Captain Downing the status of this sum of money had not been ascertained with respect to its disbursement; subsequently to his death this sum was traced into an expenditure by him for the government, and circumstances attending the reception of this sum by Captain Downing account to some extent for the neglect to enter it in his accounts.

These circumstances are so concisely and well stated in a letter of the Hon. William McMichael, United States district attorney for the eastern district of Pennsylvania, dated June 2, 1874, and addressed to the Hon. Bluford Wilson, Solicitor of the Treasury, that the body of the same is here presented:

"SIR: I have carefully considered the application made on behalf of the sureties of the late William R. Downing, captain and assistant quartermaster, United States Volunteers, for a settlement of the claim against him upon payment of costs. I have concluded to recommend that the settlement be made; but as the whole difficulty has arisen from an accounting officer not keeping proper accounts, I have arrived at this conclusion reluctantly, and because Captain Downing is dead, the loss would fall upon sureties, and because I am satisfied, from the best information I can obtain in the case, that the amount claimed was disbursed in good faith by Captain Downing through William L. James, his clerk.

"The certificate of the Third Auditor, dated May 2, 1873, states the balance due as \$6,242.22.

"In the statement of differences No. 56, which is inclosed, the last item of charge is the following:

"The officer receipts to Col. R. E. Clary, assistant quartermaster, July 3, 1862, for \$10,000, which he fails to acknowledge in his account-current—\$10,000."

"This item of \$10,000 of July 3, 1862, appears never to have been taken up by Captain Downing on his accounts, and it is explained in the following manner:

"On July 3, 1862, Captain Downing's station was Wheeling, Va., but he was then temporarily absent on a visit to his family in Pennsylvania. His chief clerk, who had charge of his accounts, was William L. James. On the 3d of July, A. W. Gwinner, agent of the Pennsylvania Railroad Company, arrived at Wheeling, and induced James to obtain from Maj. R. E. Clary funds to pay railroad accounts against the United States, which Gwinner was collecting for the railroad company.

"James obtained funds from Major Clary, and the amount so obtained he paid to Gwinner. Major Clary reports the amount so obtained from him (by James for Captain Downing) as \$10,000, and with that sum, as of July 3, 1862, Captain Downing is charged. It would appear, therefore, that the amount received by James for Captain Downing, and charged against the latter, was paid out for railroad claims against the United States. A letter from Second Comptroller Brodhead, dated April 15, 1874, which is inclosed, certifies that Captain Downing never claimed credit in his accounts for this payment to the Pennsylvania Railroad Company.

"It would appear, therefore, that during his absence this \$10,000 was received by his clerk, William L. James; was by him disbursed; that he has been charged by the accounting officers of the Treasury with said sum (statement 56, inclosed), and he is therefore entitled to be credited with its disbursement, which would more than equal the amount of the present claim. I have examined William L. James, who has attended at my office; he seems to me a truthful and responsible man, and he has no doubt that the sum which he received from Major Clary he paid over to Mr. Gwinner for railroad claims. He does not remember that sum distinctly to have been \$10,000, but this amount is fixed by Major Clary and the receipt. It struck me as soon as I examined the case that the books of the railroad company should show this payment of \$10,000. Mr. Gwinner, the agent referred to, made his appearance before me and explained that his collections were for different offices to which he distributed the amounts received, and that a regular system of accounting was not kept; and that, in the lapse of time, books of the company may have been destroyed. He remembers being at Wheeling about the time in question, and that he received a payment from James, but cannot fix with certainty the exact amount or date. No additional light is thrown upon the case by an examination of the books, which I have requested. I have arrived at a favorable conclusion upon the following grounds:

"*First.* Captain Downing seems to have been an honest man, but a poor accountant. The presumption is that he dealt honestly by the United States. He is dead and cannot explain.

"*Second.* He was absent July 3, 1862, the date of the charge of \$10,000 by Major Clary, and upon the receipt against him.

"*Third.* William L. James had charge of his accounts, and on his absence on July 3, 1862, obtained a sum of money from Major Clary, which was paid over to Mr. Gwinner for sums due the railroad by the United States. Major Clary and the receipt fix this amount at \$10,000.

"*Fourth.* Being now charged with this \$10,000, Comptroller Brodhead certifies that he did not claim credit for that payment of it in his accounts. As he is charged with the amount, and his clerk, who got the money, seems honestly to have disbursed it, I

4 HEIRS AT LAW OF WILLIAM R. DOWNING, DECEASED.

think Captain Downing may be credited with it to the extent of the amount now claimed.

"The affidavit of William L. James, the clerk who received the money from Colonel Clary, and that of Henry W. Gwinner, the agent of the Pennsylvania Railroad Company, who received the money for that company in payment of transportation, make it evident that Captain Downing was entitled to be credited with this sum of ten thousand dollars (\$10,000)."

These affidavits are as follows:

AFFIDAVIT OF WILLIAM L. JAMES.

STATE OF PENNSYLVANIA,
City of Philadelphia:

Before me, E. H. Bailey, notary public for the commonwealth of Pennsylvania, duly commissioned and sworn, residing in the city of Philadelphia, personally appeared William L. James, who, being by me duly sworn according to law, did depose and say that he is a resident of the city of Philadelphia, State of Pennsylvania; that in the years of 1861 and 1862 he was acting as chief clerk to William R. Downing, captain and assistant quartermaster, United States Volunteers, at Wheeling, Va.; that during the absence of the said Captain Downing, on the occasion, as he believes, of a visit to his home in Chester County, Pennsylvania, about the 4th day of July, 1862, he, the deponent, obtained a sum of money which, to the best of his knowledge and belief, was \$10,000, from Maj. R. E. Clary, chief quartermaster, which amount, it is deponent's impression and belief, was used for the payment of transportation accounts to Mr. H. W. Gwinner, who at that time was general ticket agent of the Pennsylvania Railroad Company, as deponent believes; Mr. Gwinner, having arrived at Wheeling in the evening, en route to Cleveland, was very desirous to make the collection and proceed on his trip without delay, and Captain Downing being absent, application was made by the deponent to Maj. R. E. Clary for the amount of funds required as above set forth, for which deponent gave a memorandum receipt, and for which Captain Downing exchanged his official receipt on his return to Wheeling.

WM. L. JAMES.

Sworn and subscribed to before me this 18th day of December, A. D. 1873.

[NOTARIAL SEAL.]

E. H. BAILEY.

AFFIDAVIT OF HENRY W. GWINNER.

STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

Before me, E. H. Bailey, notary public for the commonwealth of Pennsylvania, duly commissioned and sworn, residing in the city of Philadelphia, personally appeared H. W. Gwinner, who, being by me duly sworn according to law, did depose and say: That he is a resident of the city of Philadelphia, Pa., and at present auditor of passenger accounts of the Pennsylvania Railroad Company; that in the years 1861 and 1862 he was acting as military agent of the Pennsylvania Railroad Company, and as such had charge of and was the collector of a large portion of the accounts of said Pennsylvania Railroad Company; that some time during the summer of 1862, the exact date of which he is now unable to give, he was at Wheeling, Va., and while there received from William L. James, who was then chief clerk to William R. Downing, captain and assistant quartermaster, U. S. A., at Wheeling, Va., a sum of money, the exact amount of which he cannot now remember or state, and for which he gave the said William L. James receipts.

The deponent further says that he has read the affidavit made by William L. James on the 18th day of December, 1872, in relation to the payment made by the said James to the deponent, and while he is unable to fix with certainty the precise date at which said payment was made, or the exact amount he, the said deponent, received at the time from the said William L. James, he distinctly recalls the circumstances under which said money was paid, and thinks that it is probable that the sum so received by him was ten thousand dollars (\$10,000), as it was not unusual for the deponent to receive payments of such sums from quartermasters on account of freight shipments.

That this deponent is unable to fix the exact amount received by him at the time above mentioned from the said William L. James, chief clerk, as aforesaid, because the habit and custom of the deponent was to receive from the freight agent of the Pennsylvania Railroad Company at Pittsburgh and from others having claims against the quartermaster at Wheeling, Va., a quantity of bills and accounts against that officer and giving a slip receipt therefor, and when any collections were made on account of said bills and accounts, the sums so collected were paid over to the various

offices entitled to receive it, and the receipts heretofore given by the deponent were surrendered to the deponent and destroyed, and no further record was kept by him of the transaction.

HENRY W. GWINNER.

Sworn and subscribed before me this second day of January, A. D. one thousand eight hundred and seventy-four.

[NOTARIAL SEAL.]

E. H. BAILEY,
Notary Public.

The conclusion derivable from the foregoing affidavits corresponds with the declaration and conviction of Captain Downing, that, instead of his being indebted to the government, the government was indebted to him.

H. W. Gwinner is still an official of the Pennsylvania Railroad Company, being now auditor of passenger accounts, and is a gentleman of irreproachable character.

William L. James is also a gentleman of high character, and is well known in the city of Philadelphia. In a word, all the parties connected with this transaction are men of good reputation.

The absence of the entry of this credit to Captain Downing cannot be attributed to anything but a mistake. The sureties of Captain Downing are secured by a mortgage on the patrimony of his two sisters, who are maiden women, advanced in life, and it is these women who now ask for the relief sought for by this bill.

The evidence is not satisfactory that the estate of Captain Downing is entitled to the credit of the \$10,000 alleged to have been paid to the Pennsylvania Railroad Company, and the committee report herewith a substitute for the bill (H. R. 1508) authorizing the accounting officers of the Treasury Department to audit and adjust the accounts of William R. Downing, deceased, if evidence is furnished that the said items in equity and justice ought to be credited, with the recommendation that it do pass.

H. Rep. 1765—2

HEIRS OF TILGHMAN WEAVER.

JULY 31, 1882.—Laid on the table and ordered to be printed.

Mr. A. HERR SMITH, from the Committee on War Claims, submitted the following

R E P O R T:

The Committee on War Claims, to whom was referred the petition of the heirs of Tilghman Weaver, of Fauquier County, Virginia, submit the following report:

That the claim is for wood taken from the farm of the decedent in Fauquier County, State of Virginia, in the years 1862, 1863, 1864, and 1865, by the Army of the United States. Amount not stated in petition.

The petitioners, Lavinia Gertrude Hunter and Margaret Louisa Redd, of the county of Fauquier, and State of Virginia, represent that—

They are the heirs-at-law of Tilghman Weaver, deceased, who died in 1861, seized of certain timber lands, lying at Warrenton Junction, in the county and State aforesaid; that during the late war the military authorities of the United States took possession of said timber lands, cut and corded the same for the use of United States military railroads; that they have not received any compensation for said timber; nor have they jointly or severally made claim for remuneration for said timber to any legally constituted tribunal.

It appears from the proof submitted that the attorney for said estate, on February 23, 1867, filed a claim before the Quartermaster-General for adjudication, and that officer disallowed it in a report to the effect "that as the wood was cut in the years 1862, 1863, and 1864, in the State of Virginia, the claimant cannot be afforded relief by this department;" and it appears the action of the Quartermaster-General was approved by the Secretary of War.

This alleged loss and damage occurred upon the theater of military operations in an insurrectionary State, and were the necessary results of such military operations, and for which, under the laws of war, the government is not responsible.

The act of Congress conferring jurisdiction upon the Commissioners of Claims was intended to ameliorate the laws of war, as applied to the classes of persons and kinds of property designated therein. If these claimants were in fact loyal as they claim, so much of their claim as is for wood, alleged to have been taken and used by the Army, was within the jurisdiction of that Commission. There is no proof showing the government received the property or ordered its taking.

The Commissioners of Claims was a tribunal expressly created for the benefit of such claimants as these allege themselves to be. The records

of that tribunal show that these claimants did not avail themselves of the privilege given them to prove their claim, and by their own laches the statute bars it.

The committee report adversely, and recommend that the petition do lie upon the table.

○

WASHINGTON L. PARVIN AND HENRY A. GREENE.

JULY 31, 1882.—Laid on the table and ordered to be printed.

Mr. A. HERR SMITH, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 1725.]

The Committee on War Claims, to whom was referred the bill (H. R. 1725) for the relief of Washington L. Parvin and Henry A. Greene, submit the following report:

The claim made by these applicants for relief, as provided in the bill referred to the committee, is for money which Captain Parvin and Captain Greene allege they expended, the one in enlisting Company F, and the other Company G, of the First Regiment of California Volunteers, in the year 1861, under the first call of President Lincoln for troops to defend the lawful authority of the government.

This bill having received favorable consideration at the hands of the Committee on War Claims in the Forty-fifth Congress, your committee have given especial attention to the law and facts, and, after a patient investigation, are unable to concur in the conclusions of that committee.

The petitioners allege that the entire expense of enlisting, subsisting, and transporting these companies from the northern part of the State, a distance of about 200 miles, to San Francisco, was paid by them up to the time when said companies were mustered into the service; and that no part of these expenses were paid by the State of California, nor has any claim been made by that State of the general government for any part thereof. Parvin makes claim for \$991.10; Greene for \$3,303.

The Adjutant-General of the United States Army, under date of March 18, 1882, writes as follows:

On May 12, 1863, Washington L. Parvin filed, in person, an account in his own favor for expenses alleged to have been incurred by him, from August 12 to 27, 1861, in recruiting Company F, First California Volunteers, amounting to \$999. The claim was, upon examination by General W. S. Ketchum, reduced to \$941.40, and paid to Captain Parvin, who receipted for the latter sum to Capt. H. Clay Wood, United States disbursing officer at Washington, D. C., May 23, 1863, in full settlement of his claim against the United States. The records do not show that any similar claim in favor of Henry A. Greene has ever been presented to this office, and the only information of record relative to any claim in his favor is contained in H. R. bills No. 617, Forty-fourth Congress, and No. 839, Forty-fifth Congress; but as no papers in connection with these bills were ever referred to this office for examination, the merits of the present claims cannot be determined. It is the opinion of this office that the amount paid Captain Parvin in 1863 was intended to cover all expenses which he then claimed were incurred by him in recruiting Company F, First California Volunteers in the year 1861.

Captain Greene alleges that he applied to the War Department for the money which he expended in raising, subsisting, and transporting

his company, and that he was informed that as he could obtain of the department only an allowance of 40 cents a day for rations, and as his claim was for an actual expenditure of more than \$1.50 per day for each man, it would be as well to seek relief from Congress for the whole as to receive from the department a part, and still be obliged to seek relief from Congress for the balance. The facts obtained from the War Department do not warrant this statement.

Claims for reimbursement of recruiting expenses are barred by section 3489, Revised Statutes, which provides, "No claims against the United States for collecting, drilling, or organizing volunteers for the war of the rebellion shall be audited or paid unless presented before the 30th day of June, 1874."

The committee are of opinion that this is one of the many claims that may be termed bill "without merit," and they report adversely, and recommend the bill do lie upon the table.

○

BENJAMIN ROUTZAHN.

JULY 31, 1882.—Laid on the table and ordered to be printed.

Mr. A. HERR SMITH, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 5285.]

The Committee on War Claims, to whom was referred the bill (H. R. 5285) for the relief of Benjamin Routzahn, report as follows :

That the claimant alleges that the sum of \$1,750.10 is due him for hay furnished United States troops during the late war. With the papers are copies of three memorandum receipts in favor of H. S. Burchard, on which Captain Rutherford certifies, on March 26, 1870, that the hay was delivered by Benjamin Routzahn.

S. L. Brown, late colonel, Quartermaster's Department, United States Army, states that he never purchased hay from Mr. Routzahn. H. S. Burchard, of Baltimore, purchased the hay charged for either from Mr. Routzahn or a Mr. Gray, of the Cumberland Valley; and on delivery of the official receipts, signed by Captain Rutherford, to whom it was delivered, he (Brown) paid Burchard for the hay.

Claimant testifies that all the time he furnished hay through Burchard he believed him to be Colonel Brown's agent, not a contractor, and regarded the United States Quartermaster's Department responsible for payment.

It appears from the proof submitted that claimant filed his claim before the Quartermaster-General for adjudication. An agent was sent to Maryland by this officer to investigate the claim, and in February, 1881, he reported that the Quartermaster's Department had paid Burchard for the hay, and recommended that the claim be rejected. The Quartermaster-General approved the report and recommendation of the agent.

The committee, in view of the foregoing statement of facts, report adversely to the bill, and recommend that it do lie upon the table.

GEORGE E. PAYNE.

JULY 31, 1882.—Laid on the table and ordered to be printed.

Mr. A. HERR SMITH, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 5923.]

The Committee on War Claims, to whom was referred the bill (H. R. 5923) for the relief of George E. Payne, submit the following report:

That the language of the bill is as follows:

That the claim of George E. Payne for the alleged wrongful seizure, use, and occupation of his sugar plantation and other property in the parish of Saint Charles, in the State of Louisiana, by the orders of military officers of the United States in 1862, with his petition and all papers filed therewith and relating thereto, including such as are on file in the Treasury and War Departments, be, and the same are hereby, referred to the Court of Claims, and the said court is hereby authorized to hear and determine, without regard to lapse of time, according to the then existing laws, after considering all competent evidence, the liability or non-liability of the United States, and, if liable, then the amount, if any, due to said Payne, and to render judgment as in other cases, &c.

On the 5th of November, 1862, General Benjamin F. Butler, commanding Department of the Gulf, issued the following order:

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, November 9, 1862.

The commanding general being informed, and believing, that the district west of Mississippi River, lately taken possession of by the United States troops, is most largely occupied by persons disloyal to the United States, and whose property has become liable to confiscation under the acts of Congress and the proclamation of the President, and that sales and transfers of said property are being made for the purpose of depriving the government of the same, has determined, in order to secure the rights of all persons as well as those of the government, and for the purpose of enabling the crops now growing to be taken care of and secured, and the unemployed laborers to be set at work and provision made for the payment of their labor—

To order as follows:

1. That all the property within the district to be known as the "District of La Fourche" be, and hereby is, sequestered, and all sales or transfers thereof are forbidden and will be held invalid.

2. The district of La Fourche will comprise all the territory in the State of Louisiana lying west of the Mississippi River, except the parishes of Plaquemines and Jefferson.

3. That Maj. Joseph M. Bell, provost-judge, president; Lieut. Col. J. B. Kinsman, A. D. C.; Captain Fuller (Seventy-fifth New York Volunteers), provost-marshal of the district, be a commission to take possession of the property in said district, to make an accurate inventory of the same, and to gather up and collect all such personal property, and turn over to the proper officers, upon their receipts, such of said property as may be required for the use of the United States Army; to collect together all the other personal property, and bring the same to New Orleans, and cause it to be sold at public auction to the highest bidders; and, after deducting the necessary expenses—

of care, collection, and transportation—to hold the proceeds thereof subject to the just claims of loyal citizens and those neutral foreigners who in good faith shall appear to be the owners of the same.

4. Every loyal citizen or neutral foreigner who shall be found in actual possession and ownership of any property in said district, not having acquired the same by any title since the 18th day of September last, may have his property returned or delivered to him without sale, upon establishing his condition to the judgment of the commission.

5. All sales made by any person not a loyal citizen or foreign neutral, since the 18th day of September, shall be held void, and all sales whatever, made with the intent to deprive the government of its rights of confiscation, will be held void, at what time soever made.

6. The commission is authorized to employ in working the plantation of any person who has remained quietly at his home, whether he be loyal or disloyal, the negroes who may be found in said district, or who have, or may hereafter claim, the protection of the United States, upon the terms set forth in a memorandum or a contract heretofore offered to the planters of the parishes of Plaquemines and Saint Bernard, or white labor may be employed, at the election of the commission.

7. The commissioners will caused to be purchased such supplies as may be necessary, and convey them to such convenient depots as to supply the planters in the making of the crop; which supplies will be charged against the crop manufactured and shall constitute a lien thereon.

8. The commissioners are authorized to work for account of the United States such plantations as are deserted by their owners, or are held by disloyal owners, as may seem to them expedient for the purpose of saving the crops.

9. Any persons who have not been actually in arms against the United States since the occupation of New Orleans by its forces, and who shall remain peaceably upon their plantations, affording no aid or comfort to the enemies of the United States, and who shall return to their allegiance, and who shall, by all reasonable methods, aid the United States when called upon, may be empowered by the commission to work their own plantation, to make their own crop, and to retain possession of their own property, except such as is necessary for the military uses of the United States. And to all such persons the commission are authorized to furnish means of transportation for their crops and supplies at just and equitable prices.

10. The commissioners are empowered and authorized to hear, determine, and definitely report upon all questions of the loyalty, disloyalty, or neutrality of the various claimants of property within said district; and, further, to report such persons as in their judgment ought to be recommended by the commanding general to the President for amnesty and pardon, so that they may have their property returned; to the end that all persons that are loyal may suffer as little injury as possible, and that all persons who have been heretofore disloyal may have an opportunity now to prove their loyalty and to return to their allegiance, and save their property from confiscation, if such shall be the determination of the Government of the United States.

By command of Major-General Butler.

GEO. C. STRONG,
A. A. G. and Chief of Staff.

On the 8th day of December, 1862, one John S. Woodward, under the orders of the sequestration commission and the authority of General Order No. 91, took possession of claimant's plantation.

On the 9th day of October, 1863, the War Department issued the following order, to wit:

[General Orders, No. 331.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, October 9, 1863.

The President orders:

1. All houses, tenements, lands, and plantations, except such as may be required for military purposes, which have been or may be deserted and abandoned by insurgents within the lines of the military occupation of the United States forces in States declared by proclamation of the President to be in insurrection, will hereafter be under the supervision and control of the supervising special agents of the Treasury Department.

2. All commanders of military departments, districts, and posts will, upon receipt of this order, surrender and turn over to the proper supervising special agent such houses, tenements, lands, and plantations, not required for military uses, as may be in their possession or under their control; and all officers of the Army of the United States will, at all times, render to the agents appointed by the Secretary of the Treas-

ury all such aid as may be necessary to enable them to obtain possession of such houses, tenements, lands, and plantations, and to maintain their authority over the same.

By order of the Secretary of War:

E. D. TOWNSEND,
Assistant Adjutant-General.

Under this order the government, by its special agent of the Treasury Department, continued to hold and cultivate the plantation of claimant until 1865, when it passed into the possession and control of the Bureau of Refugees, Freedmen, and Abandoned Lands, and was held by that bureau and its tenants until January 1, 1866.

It appears from the proof submitted that Mr. Payne, on May 24, 1864, applied to Hon. E. M. Stanton, Secretary of War, for restoration of his property, who referred the application to Maj. Gen. E. R. S. Canby, then commanding the Military Department of the South, for examination and report, who, on the 25th day of July, 1864, after having made full investigation of the case, recommended that the claimant's plantation be restored to him at the expiration of the lease January 1, 1865. This report was approved by the Secretary of War on August 11, 1864.

At the expiration of the lease, January 1, 1865, the special agent of the Treasury Department refused to surrender to claimant his plantation, except on condition that claimant would give a receipt releasing the Government of the United States, and all its officers and agents, from any claim he had or might have for damage growing out of the seizure and detention of his said property. This, it appears, Mr. Payne declined doing.

In September, 1865, Mr. Payne petitioned the President of the United States for redress. The President referred the case to the Attorney-General, who, on September 13, 1865, returned to the President the following opinion:

ATTORNEY-GENERAL'S OFFICE,
September 13, 1865.

To the President:

SIR: On the 1st instant I received from the Acting Assistant Secretary of War all the papers on the files of the War Department relative to the claims of George E. Payne, of Louisiana. These papers were sent to me, as mentioned in the letter from the department, by your direction.

No question or matter is stated in the letter of the department on which my opinion or advice is asked, nor do you indicate any point relative to the claim referred to on which you desire an expression of my opinion.

I cannot certainly say, therefore, whether the few remarks I will now make will be at all pertinent to any question in the case that may be before your excellency or the War Department.

It is stated in a communication dated March, 1865, addressed to the Secretary of War by Payne through his attorney, that Mr. Payne is the owner of a plantation in the parish of Saint Charles, Louisiana; that the plantation was seized by the military authorities as abandoned property, and by them was subsequently turned over to the agents of the Treasury Department; that an application made by the claimant to the Secretary of the Treasury for restoration of this property was refused, on the ground that its disposition was within the jurisdiction of the War Department; that the claimant then applied to the Secretary of War for restoration of the property in question, which application was referred to Major-General Canby, commanding the Military Division of the West Mississippi; that Major-General Canby recommended that the plantation be *restored to the petitioner at the expiration of the lease executed by the Treasury Department to William Spear*; and that the Secretary of War, on August 11, 1864, *approved the report of Major-General Canby*.

I do not find that any order was issued by the Secretary directing the restoration of the plantation to Mr. Payne, at the expiration of the lease to William Spear, unless the order approving General Canby's report recommending that the plantation be restored is interpretable as an order of restoration.

It would appear that the officer in charge of the plantation so interpreted the action of the Secretary on General Canby's report. For it is stated by Mr. Flanders that he is ready and willing to give possession of the property to Mr. Payne on condition that

he will release, in writing, the government, and the officers and agents thereof, from any claim for damages that he may have growing out of the use, occupancy, or possession of the property. This demand of the agent of the Treasury Department, who seems to have control of the property, is the burden of Mr. Payne's complaint. He alleges that the agent is not authorized to require him to perform any such condition, or to give any such release as is suggested.

That may be true, or it may be not. I cannot tell what other order or instructions may have issued from the War Department relative to the restoration of this property. Mr. Flanders, the Treasury agent, may have been instructed by the department to require such a release to be executed before giving possession of the property to Mr. Payne.

Whether such instructions were given or not, the fact that the agent of the Treasury demands such a release shows that some further action or order of the War Department is required in the case. The Secretary, when he approved General Canby's report, certainly did not allude to the execution of any release in the case. If his action is to be interpreted as an order of restoration, he gave an order of unconditional restoration, to take effect on the expiration of the lease to which reference has been made.

But the question of the propriety of requiring Mr. Payne to release the government and its officers from claims for damages was not before the department when the order of August 11, 1864, was made. It is now, for the first time, suggested by the agent in possession of the property.

It can only be determined by the War Department. The Secretary of War must, therefore, it seems to me, decide whether the agent of the Treasury is to be sustained in his demand of a release or not. If he decides that restoration should be made without a release from Mr. Payne, the department will direct the plantation to be returned to the owner without his performing any condition. If, on the other hand, the department decides that Mr. Payne should give such a release as the agent demands, it will direct restoration to be made on his complying with that condition.

I would respectfully suggest, therefore, that the question between Payne and the special agent of the Treasury, in possession of the property, relative to the execution of a release in the form stated, should be determined by the War Department.

I have returned the papers in the case to the War Department.

I remain, Mr. President, with the greatest respect,

JAMES SPEED,
Attorney-General.

On receipt of this opinion the President (Andrew Johnson) made the following order :

EXECUTIVE MANSION, *September 14, 1865.*

The recommendation of General Canby will be at once carried into effect, and the property restored to its owner.

ANDREW JOHNSON,
President United States.

In pursuance of this order, the plantation was restored to the claimant under the following order :

WAR DEPARTMENT,
BUREAU OF REFUGEES, FREEDMEN, AND ABANDONED LANDS,
Washington, September 16, 1865.

SIR: In compliance with instructions received at this office from the President of the United States, you are directed to restore to its owner, so far as the jurisdiction of this bureau extends over it, the property of Mr. George E. Payne, of Louisiana, now held by you as abandoned property. Said property is said to consist of one plantation in Saint Charles Parish, known as the Payne plantation. This property will be restored subject to the requirements of Circular No. 3, current series, from this bureau, and upon condition that present lessees, if there are any, be allowed to remain in occupation until the expiration of their leases. Nothing in the order of restoration is to be construed as giving any additional claim for damages or rents which may have accrued prior to the 14th day of September, 1865.

By order of Maj. Gen. O. O. Howard, commissioner.

WILLIAM FOWLER,
Assistant Adjutant-General.

Rev. THOMAS H. CONWAY,
Assistant Commissioner, New Orleans, La.

It appears, from the proof submitted, that the government received from the Payne plantation, as the result of the seizure, the sum of

\$23,698.96. Of this amount the War Department received \$6,688.13, and the Treasury Department \$17,010.83. The latter amount was paid to claimant by Benjamin F. Flanders, supervising special agent of the Treasury Department, on July 6, 1865. The following is a copy of his receipt for the money:

\$17,010.83.

NEW ORLEANS, *July 6th*, 1865.

Received of Benj. F. Flanders, sup'g special agent of the Treasury Department, third agency, seventeen thousand ten $\frac{83}{100}$ dollars (\$17,010.83), the same being the net proceeds of the George E. Payne plantation for the year 1863, said plantation in the parish of St. Charles, and State of Louisiana, and was seized by the military authorities of the United States in December, 1862, and by the military authorities turned over to the said Flanders in September, 1863, and was released to the said Payne on the — day of —, 1866.

I receive this money in full satisfaction of all claims of whatever name or nature, growing out of the seizure, working, detention of, or damage done to the said plantation for the year 1863 (eighteen hundred and sixty-three), and I hereby release and discharge the Government of the United States, the said B. F. Flanders, and all others acting as the agents of the government, of and from all claims and demands, which I now have or may hereafter have on account of anything done by the United States, or any of its agents, touching the occupation and detention of my said plantation during the year 1863, and the detention of the net proceeds of the crop thereof of the said year, 1863.

GEORGE E. PAYNE.

The claimant then applied to the Secretary of War for the amount received by the War Department, and it was denied him for the reasons set forth in the following letter from the Judge-Advocate-General, to wit:

WAR DEPARTMENT,
BUREAU OF MILITARY JUSTICE,
March 30, 1866.

To the SECRETARY OF WAR:

George E. Payne, whose plantation in Saint Charles Parish, Louisiana, was originally taken possession of as abandoned property, and, after having been worked by the sequestration commission in the Department of the Gulf, and subsequently managed by the Freedmen's Bureau, was restored to the owner by the order of the President, renews his application to have paid over to him the sum of \$6,688.13, which is the balance reported by said commission as remaining to be accounted for as the profits of the plantation while worked by their agents or lessees. Major-General Canby reports that the money has been expended in the public service, but the records do not show whether in the Quartermaster's or Subsistence Department. The War Department is therefore without funds properly applicable to the payment of this demand, even if the claim could be adjudicated by the Executive branch of the government under existing law, which this bureau considers impracticable. Moreover, it is to be observed that the order of the Commissioner of the Freedmen's Bureau for the surrender of the property contains this proviso: "Nothing in the order of restoration is to be construed as giving any additional claim for damages or rents which may have accrued prior to the 14th of September, 1865." The enforcement of this condition, which the claimant is believed to have acquiesced in by accepting his plantation on the terms prescribed, would bar any right on his part to recover the sum here sought to be obtained. At all events, inasmuch as this claim is for losses sustained by a citizen of a State in rebellion, in consequence of operations instituted by authority of military commanders of the United States in the prosecution of the war, the opinion is entertained that it should be referred to the determination of Congress. This estate, up to the time of its restoration to the owner, was held as a capture, which had been taken possession of by the military authority in pursuance of the laws of war; and if Congress should, as is not anticipated, so far depart from those laws as to enact that reimbursement shall be made for the use and profits thereof while so held, it is deemed clear that the executive department cannot and should not assume to act in the premises.

J. HOLT,
Judge-Advocate-General.

Your committee concur in this conclusion, and hold that his acceptance of the plantation on the terms prescribed by the Commissioner of the Freedmen's Bureau would bar any right on his part to recover damages for the use and occupation of said plantation.

It is submitted that in a war between nations, "every man is, in judgment of law, a party to the acts of his own government, and the war between the governments of two nations is a war between all the individuals of the one, and all the individuals of which the other nation is composed" (1 Kent Com., page 55). Hence, we may say correctly that the claimant, a citizen residing in the State of Louisiana at the time of and during the insurrection, was, while the war lasted, a public enemy.

But it may be said that the late war was a civil war and the rules of nations are not applicable; but the Supreme Court of the United States have held that such laws and rules did obtain (Mrs. Alexander's Cotton, 2 Wallace, page 404).

The claimant, measured by this rule, was entitled to nothing from the United States, and the amount received by him, \$17,010.83, was a gift and nothing more.

The committee therefore hold that the use and occupation of claimant's plantation was a casualty of war, for which the government is neither legally nor morally bound to make compensation.

The proofs contain the usual allegations of loyalty on the part of the claimant. The settled conviction of the committee repeatedly and uniformly acted upon dispenses with the necessity of analyzing the evidence concerning the fact of the averred loyalty of the claimant, but they feel it incumbent on them to state that proof of loyalty can only be made out by proof of facts. The proofs of loyalty in reality are mere indorsements of high character and respectability, but fail to state any facts.

The committee, in conclusion, report that, as their judgment, the passage of this bill, opening the doors to claimants to go into court in times of peace to review the acts of the government through its officers in insurrectionary territory in time of war, would be a most unwise piece of special legislation. Hence they report adversely to the bill, and recommend that it do lie upon the table.

JESSE M. CORN.

JULY 31, 1882.—Laid on the table and ordered to be printed.

Mr. A. HERR SMITH, from the Committee on War Claims, submitted the following

REPORT:

The Committee on War Claims, to whom was referred the petition of Jesse M. Corn, of Henderson County, North Carolina, submit the following report:

That this is a claim for the sum of \$150 for a horse alleged to have been taken from the petitioner by soldiers of the United States Army during the late war. Claimant filed his petition and account before the Commissioners of Claims, March 23, 1872, offered proof in support of his claim, and, after a due hearing, the commission disallowed his claim in their ninth general report of December 16, 1879.

The committee, after examining all the evidence filed in the case, fully concur in the opinion of the commissioners in disallowing the claim. The evidence does not show that claimant was very loyal to the Union; he was no "adherent" to the cause. In fact, according to his own statement under oath, he served about twelve months in the Confederate army.

The committee are of the opinion that the claim should be rejected, and report adversely to the petition, and recommend that it do lie upon the table.

JOHN A. COAN.

JULY 31, 1882.—Laid on the table and ordered to be printed.

Mr. A. HERR SMITH, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 4190.]

The Committee on War Claims, to whom was referred the bill (H. R. 4190) for the relief of J. A. Coan, submit the following report:

That the bill under consideration, to quote its language, is—

That jurisdiction and authority are hereby conferred upon the Court of Claims to adjudicate, on terms of equity and justice, the claim of John A. Coan for damages and loss of property sustained by him by reason of the failure of the United States to secure to him and protect him in the enjoyment of certain plantations situated in the parish of Concordia, in the State of Louisiana, known, respectively, by the names of Balmagan, Rosedale, Brabston, and Forrest Home, leased by him about the year 1864, under authority of the United States; and shall render judgment for said damages, any statute of limitations to the contrary notwithstanding.

This bill proposes simply a reference to the Court of Claims to assess the damages of the claimant, without disclosing the probable amount expected to be awarded, and is very objectionable in form in this, that it impliedly adjudicates upon the legal right of the claimant, and withdraws that question from judicial consideration.

A careful examination of the papers submitted discloses the fact that the claim is for the prospective value of growing crops, cotton, corn, mules, horses, and for damages to property, estimated at \$229,600.

It appears from the proof submitted that, on the 29th of March, 1864, William P. Mellen, supervising special agent of the Treasury Department, leased to John A. Coan, from that date to January 1, 1865, the following plantations in the parish of Concordia, State of Louisiana, to wit, Balmagan, Rosedale, Brabston, and Forrest Home, and four other plantations, to which the petition does not especially refer; and Coan agreed to pay, as rent, one cent per pound on all cotton, and a proportionate sum upon all other products raised by him, to employ freedmen, and to furnish to the persons so employed suitable tenements, and to pay each freed person so employed \$9 per month, according to the terms set out and established in section 12 of Military Order No. 9, published March 11, 1864, &c. The following is a copy of one of the leases:

LEASE.

This agreement, made this seventh day of March, 1864, by and between the United States of America, by William P. Mellen, supervising special agent of the Treasury Department, in the first agency, and John A. Coan, of Cincinnati, in the State of Ohio, witnesseth:

That, in pursuance of instructions from the Secretary of the Treasury of the United States, and of orders from the Secretary of War, concerning the leasing

of abandoned houses, tenements, and lands in States declared in insurrection, the said agent, for and in behalf of the United States, agrees, upon the terms herein-after contained, to lease to the said John A. Coan, from the date hereof to the first day of January, 1865, the following described lands and premises, viz: Brabston plantation, belonging to James Brabston, twenty-five miles below Vidalia, in Concordia Parish, La., containing seven hundred acres of land under cultivation. And the said John A. Coan having taken and filed the prescribed oath hereunto annexed, hereby agrees to pay to the said agent, as rent for the above described lands and premises, one cent per pound on all cotton, and five cents per bushel upon all other products raised by him, which payment shall be made as provided for, and in pursuance of the Rules and Regulations for leasing Abandoned Plantations and employing Freedmen; and in all cases where freed labor is employed, the said John A. Coan further agrees to contribute or pay to the said agent the sum of one cent per pound on all cotton, and 2 cents per cord on all wood cut and sold by him from the premises, and two and a half cents per bushel on all other products grown on said premises, for the purposes set forth in section 3 of said Rules and Regulations.

And the said John A. Coan further agrees that, during the continuance of this lease, he will keep employed one No. 1 man, or the equivalent thereto, in men, women, or children, for each twelve acres of tillable land occupied by him under this lease, it being hereby agreed that said premises contain 700 acres, and require 58 No. 1 hands, or their equivalent in other grades. And the said lessee further agrees to furnish to the persons so employed, suitable tenements, with separate quarters for families who may desire the same; and that to each family of four or more persons he will set apart for their sole use and benefit a portion of ground suitable for garden purposes, and fuel sufficient for the use and comfort of each family, all of which shall be without charge to such persons or the government.

Said lessee hereby further agrees that no freed person shall be employed on the said premises, except under contracts made with such person; and no contract for freed labor shall be valid without the sanction of the superintendent of the Freedmen's Home Farm, who shall in each case designate the proportion of each grade or sex to be employed.

Said lessee further agrees to pay each freed person so employed, according to the terms set out and established in section 12 of Military Order No. 9, published March 11th, 1864.

It is further agreed that the parties of this contract shall be subject to the observance of the Rules and Regulations hereto subjoined, and to the provisions of Military Order No. 9, published March 11th, 1864.

WM. P. MELLEN, [L. S.]
Supervising Special Agent Treasury Department, First Agency,
 By W. BURNET, [L. S.]
Assistant Special Agent for leasing plantations.
 JOHN A. COAN. [L. S.]

Signed, sealed, and delivered in presence of—
 SAM'L D. SCHOOLEY.

[Rules and Regulations prescribed by the Secretary of the Treasury, with the approval of the President.]

Regulations concerning the charge and leasing of abandoned and confiscable lands, houses, and tenements, in States declared in insurrection, made in pursuance of the act of Congress on that subject, approved July 2, 1864.

AGENTS TO CARRY OUT THESE REGULATIONS.

I. The regulations relative to abandoned and confiscable lands, houses, and tenements will be carried into effect by the same agents, and under the same supervision, as are provided under the regulations concerning commercial intercourse.

AGENTS TO TAKE POSSESSION OF ABANDONED LANDS, TENEMENTS, ETC.

II. The supervising special agent of each agency, and such assistant special agents therein as shall be designated for that purpose, will take possession of all lands, houses, and tenements therein, abandoned by the lawful owners thereof, and all such as are confiscable under the act of Congress approved July 17, 1862.

ASSISTANT AGENT TO KEEP RECORD AND MAKE REPORT.

III. When an assistant special agent shall take possession of any such property, he will promptly record, in a book to be kept by him for that purpose, a full description of the property, with a statement of its condition, the name of the owner, and any facts relating to him, or to the property, which may affect the rights of the United

States, or of others interested in the property, one copy of which record he will promptly transmit to the Secretary of the Treasury, and one to the proper supervising special agent, who will record the same in a book to be kept for that purpose.

SUPERVISING SPECIAL AGENT TO MAKE RECORD AND REPORT.

IV. When a supervising special agent shall take possession of any such property, he will make a record as above required of an assistant special agent, and will transmit a copy thereof to the Secretary of the Treasury.

LANDS, TENEMENTS, ETC., TO BE LEASED.

V. All property so possessed will be rented as soon as practicable by the supervising special agent, or the assistant special agent, under his direction, having such possession. No lease will be made for more than twelve months, and, when practicable, such property shall be rented from month to month. All leases will be in writing, and those for plantations shall be in the following form:

Memorandum of an agreement made this — day of —, 186—, between —, special agent of the Treasury Department, duly appointed under the acts of Congress respectively approved March 12, 1863, and July 2, 1864, for taking charge of captured and abandoned property, and leasing abandoned and confiscable lands, houses, and tenements in the — agency, and — of —, in the county of —, and State of —, witnesseth,

That in pursuance of said acts, and of the instructions of the Secretary of the Treasury, the said agent, for and in behalf of the United States, agrees, upon the terms hereinafter contained, to lease to the said —, from the — day of —, 186—, to the — day of —, 186—, the following described lands and premises, to wit: —.

And the said — hereby agrees that one equal — part of the productions realized by the cultivation and working of the plantation aforesaid shall be promptly gathered, prepared, and delivered to the authorized agent of the United States at —, on or before the — day of —, 186—, in proper packages and condition for transportation.

And the said — further agrees, in relation to the employment and payment of freedmen worked upon the said plantation, that he will employ and pay them, and provide for their families in compliance with the regulations of the Secretary of the Treasury dated July 29, 1864, concerning the employment and general welfare of freedmen, which regulations are made a part of this agreement, so far as they relate to employers and employed; and further, that he will do all things required of him by the regulations of the Secretary of the Treasury concerning abandoned, captured, and confiscable property.

Signed, sealed, and delivered in presence of—

— [L. S.]
— [L. S.]

WHEN LEASE IS FOR HOUSES AND TENEMENTS ONLY.

VI. When the lease is for houses and tenements only, then it shall be in the above form to the words "to lease to the said —," and instead of what follows therein, insert as follows:

From the — day of —, 18—, from month to month, either party hereto being at liberty to terminate this lease at the end of any month from the date hereof, the following described premises: —.

And the said — hereby agrees to pay the said agent — dollars per month, for each month from the date hereof, so long as he shall continue in possession of the said premises, and to pay the rent of each month in advance, and at the expiration of this lease as aforesaid to deliver possession of said property to the said agent, or his successor, in as good condition as the same is now in, loss by fire or other unavoidable injury excepted.

Signed, sealed, and delivered in presence of—

— [L. S.]
— [L. S.]

LEASES TO BE MADE IN TRIPLICATE.

VII. All leases of lands, houses, and tenements shall be made in triplicate, one of which shall be retained by the lessee, one will be retained by the special agent making the lease, and one will be forwarded to the Secretary of the Treasury. A record will be made by each agent making a lease, containing a copy thereof, and any facts connected therewith which may affect the same. A copy of the record will also be made in a book kept by the supervising special agent for that purpose.

AGENT TO RECEIPT FOR RENTS.

VIII. Upon the receipt of products or money for rent, the agent receiving the same will indorse his receipt therefor upon the copy of the lease held by the lessee, and also give him a certified copy of the receipt, which the lessee will promptly forward to the Secretary of the Treasury.

ASSISTANT AGENTS TO KEEP RECORD OF RENTS RECEIVED.

IX. When products or money shall be received by an assistant special agent, he will make an entry in his books of account, stating the products or amount of money so received, the name of the person from whom received, and the lease upon account of which they are paid, the date of receipt, and any other facts connected therewith which should be recorded. He will promptly send the products or money so received, with a copy of the entry made, to the proper supervising special agent, who will credit the products or money in his books of account, and make an entry in each case similar to that above required, and send duplicate receipts in each case to the assistant special agent, who will retain one copy and send the other to the Secretary of the Treasury.

SUPERVISING AGENTS TO KEEP RECORD OF RENTS RECEIVED.

X. When the products or moneys are received by a supervising special agent, he will make the same entry above required of assistant special agents in his books of account, and will send a copy thereof to the Secretary of the Treasury.

DESCRIPTION OF CONFISCABLE LANDS, TENEMENTS, ETC., TO BE KEPT.

XI. A careful description of all lands, houses, and tenements taken possession of by a supervising special agent, or by his direction, as confiscable, will be recorded by him in a book kept for that purpose, in which will be entered all allegations against the owner which are relied on for condemnation, together with the names and residence of the witnesses to substantiate them, a copy of which record in each case will be sent to the Secretary of the Treasury.

COPY OF RECORD OF CONFISCABLE LANDS, ETC., TO BE SENT TO THE UNITED STATES DISTRICT ATTORNEY IN CERTAIN CASES.

XII. When any such lands, houses, and tenements are situated in a district within jurisdiction of a Federal court exercising its functions, a copy of the above record, together with a statement of any other facts known to the supervising special agent affecting the same, will be sent by him to the proper United States district attorney, that proceedings for confiscation may be instituted, but such agent will continue in charge of the property until relieved therefrom by order of the court in which such proceedings are instituted.

PRODUCTS RECEIVED FOR RENTS TO BE SOLD.

XIII. Supervising special agents will sell or dispose of all products received by them for rents, in the same manner and subject to the same regulations as are prescribed by the Secretary of the Treasury concerning the sale and disposition of captured, abandoned, and confiscable personal property.

MONEY RECEIVED FOR RENTS TO BE DEPOSITED.

XIV. All money arising from rents, after payment therefrom of any expenses that may be approved by the Secretary of the Treasury, will be deposited by the supervising special agents with a designated United States depository or assistant treasurer, and each supervising special agent will make a full record of all his proceedings, and will report the same from time to time to the Secretary of the Treasury, and will render to him a monthly account-current of all his transactions, accompanying the same with receipts or other vouchers for all moneys paid out by him, referring to the letter of approval thereof from the Secretary of the Treasury.

EMPLOYMENT AND WELFARE OF FREEDMEN.

XV. In leasing abandoned and confiscable lands, provisions shall be made, as far as practicable, for the employment and general welfare of freedmen, and provision may be made in such leases, and also with those working their own lands and employing freedmen under rules established in relation thereto, for obtaining supplies free from the payment of the fee charged in other cases, and for the support of the helpless among such freedmen.

The claimant alleges—and for the purposes of the case it may be conceded—that this land was placed under cultivation and planted with cotton and corn, and that the crop was thrifty and promised an abundant yield. But prior to the picking, in the summer of 1864, numerous bands of rebel guerrillas overrun said plantations, destroyed nearly all the cotton growing thereon, and carried off most of his stock, farming utensils, and other property he had gathered there to facilitate the business of working said plantations.

The claimant further alleges that, being a lessee of the government, he is entitled to compensation for his losses, which, in the opinion of the committee, is clearly untenable. No such exception is found in the lease. None is provided in the act of Congress under which the lease was made. Act of July 2, 1864 (13 Stat. at L., p. 375), section 2, reads as follows:

That in addition to the captured and abandoned property to be received, collected, and disposed of, as provided in said act, the said agents shall take charge of and lease, for periods not exceeding twelve months, the abandoned lands, houses, and tenements within the districts therein named; and shall also provide in such leases or otherwise for the employment and general welfare of all persons within the lines of national military occupation within said insurrectionary States formerly held as slaves who are or shall become free. Property, real or personal, shall be regarded as abandoned when the lawful owner thereof shall be voluntarily absent therefrom, and engaged, either in arms or otherwise, in aiding or encouraging the rebellion.

The committee are of the opinion that there is no equity in the case; because, when the claimant took the property, he did it as a speculator. The State of Louisiana was in insurrection, and the property within enemy lines and subject to the march of armies to and fro, and in their route, and he knew it, and made whatever investment he did with his eyes open. He knew the risk was great, but he took the risk, because, if success attended him, his returns for the investment would be large. He lost in the venture, and is alone responsible for having entered into it.

The committee see nothing in the facts creating any liability on the part of the government. They therefore report adversely to the bill, and recommend that it do lie upon the table.

H. Rep. 1771—2

OWNERS OF THE SCHOONER CHESAPEAKE TRADER.

JULY 31, 1882.—Laid on the table and ordered to be printed.

Mr. A. HERR SMITH, from the Committee on War Claims, submitted the following

R E P O R T:

[To accompany bill H. R. 6430.]

The Committee on War Claims, to whom was referred the bill (H. R. 6430) for the relief of the owners of the schooner Chesapeake Trader, report as follows:

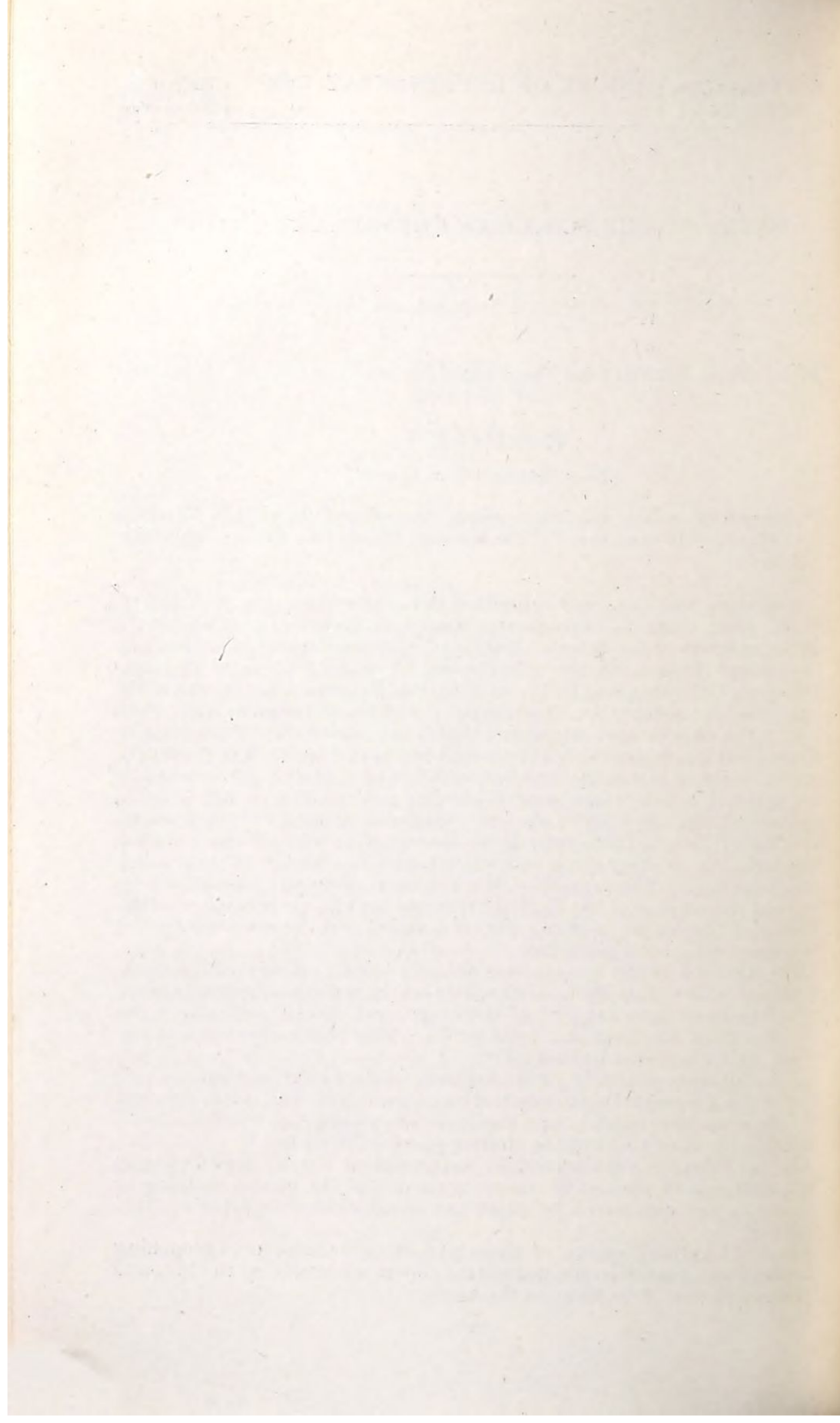
It appears from the proof submitted that on or about the 25th day of March, 1862, John W. Dougherty, James M. Roberts, and James T. Taylor, citizens of the State of Maryland, chartered their schooner, the Chesapeake Trader, to the government to carry a cargo of cannonballs from Washington, D. C., to Fortress Monroe, owners assuming under the said charter the "marine risk," and the government the "war risk." The charter also stipulated that if the vessel was towed by the government the voyage should be completed in two days. The schooner, having received her cargo, was on the 27th day of March, 1862, taken in tow by the United States steamer Eagle, and ordered on her voyage, and while being thus towed on her voyage, at about 2 o'clock a. m. of the 29th of March, 1862, arrived at Hampton Roads. "The morning was dark, the weather thick and stormy, and the harbor was crowded with shipping." The captain of the schooner protested against entering, but the captain of the United States steamer Eagle pressed on with her tow in the harbor, and ran his own vessel and the schooner on the bar, where they both grounded.

The situation of the vessels was duly reported to the assistant quartermaster at Fortress Monroe, who, two or three days afterwards, sent off lighters and took out part of the cargo, and shortly afterwards the schooner filled and became a total wreck. This is the gravamen of the claim, which is stated to be \$3,000.

The claimants promptly presented their claim to the accounting officers of the Treasury Department, who, on the 5th of May, 1869, rejected the same on the ground that the loss fell within the "marine risk" assumed by the owners in the charter-party referred to.

By our rules, an adjudication by a department having jurisdiction is held final, unless opened for cause apparent in the record or made to appear to the committee by proof not obtainable before the original hearing.

There is nothing shown in these papers to warrant us in reopening the case, and therefore the committee report adversely to the bill, and recommend that it do lie upon the table.



W. W. JACKSON.

JULY 31, 1882.—Laid on the table and ordered to be printed.

Mr. A. HERR SMITH, from the Committee on War Claims, submitted the following

REPORT:

The Committee on War Claims, to whom was referred the petition of W. W. Jackson, report as follows:

The facts out of which this claim for relief arises will be found stated in House report of the Committee on War Claims, No. 939, second session Forty-sixth Congress, a copy of which is hereto appended.

Your committee adopt the said report as their own, and report adversely, and recommend that the petition do lie upon the table.

The Committee on War Claims, to whom was referred the petition of William W. Jackson for compensation for money paid out in recruiting the First Mississippi Mounted Rifles, submit the following report:

The petitioner alleges that he served in the late war as captain and commissary of subsistence on the staff of General S. A. Hurlbut, commanding the Department of the Tennessee; that in December, 1863, he was authorized to recruit and organize the First Mississippi Mounted Rifles, and did so, the rendezvous of the regiment being at Memphis; that in the course of enlisting and organizing this regiment he was put to great expense, to wit:

Subsisting 125 men from December 11, 1863, to January, 1864, 20 days, 2,500 rations, at 40 cents.....	\$1,000 00
Subsisting 160 men during January, 1864, 4,800 rations, at same rate.....	1,920 00
Subsisting 150 men during February, at same rate, 4,200 rations.....	1,680 00
Subsisting 140 men during March, April, and May, 92 days, 12,880 rations, same rate.....	5,755 20
Total	10,355 20

The petition is not verified and is made out as if a genuine claim, being precise in date, quantities, numbers, and amount.

Why it was not sworn to is quite manifest, for while the attorney who drew it did it as a claim agent, the beneficiary seems to have shrunk from swearing to it like a man, and for this reason: He was a commissary of subsistence stationed at Memphis, the headquarters of colored refugees, where they were enrolled and fed at the expense of the government, and out of which motley crew this Falstaffian regiment was organized, or attempted to be organized. That a commissary had \$10,355.20 which he voluntarily paid out of his pocket for the use of these refugees to buy rations when he was the officer having charge of government rations, and issuing to them daily at the expense of the government, no one would believe if he swore to it, and hence his claim is unsupported by his own oath.

This claimant settled his account as commissary, and was credited, under act of June 23, 1870, with \$2,428.09, leaving a balance still standing against him of \$81.47; and during the whole period which his accounts were suspended and being adjusted he made "no claim for recruiting or subsistence of troops, or rations or stores issued

to refugees," as will be seen from a communication of the Third Auditor of the Treasury, filed with the papers.

In 1874, nearly twelve years after he advanced the modest sum of \$10,355.20 from his pocket money, he filed or made a claim, not for the subsistence he now itemizes so accurately, but for \$2.50 per head bounty for enlisting, under the authority stated in his petition, of 1,500 men. This claim was made to the Adjutant-General of the Army.

The reply thereto, under date of March 31, 1874, is filed with the papers, and contains the following information: "*I have to inform you that the records have been examined and fail to show any men recruited in your name, nor does it appear that any men were brought or presented by you with view to the premium.*"

Four years after this rebuff the present claim was manufactured. It is one of the many claims that may be aptly termed bills of pillage, and the committee report adversely, and recommend the petition do lie on the table.

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THOMAS O. FRENCH.

JULY 31, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. NEAL, from the Committee on the District of Columbia, submitted the following

R E P O R T :

[To accompany bill H. R. 6714.]

The Committee on the District of Columbia, to whom was referred the bill (H. R. 6714) to provide for the redemption of special assessment certificate No. 130, submit the following report :

That the committee have had under consideration the said bill, and report the same to the House, recommending its passage.

The committee beg leave to state that said assessment certificate was issued under the following circumstances:

By an act of Congress, approved July 8, 1870, a commission was created, consisting of the Secretary of the Interior, the engineer in charge of public buildings and grounds, and the mayor of the city of Washington, to cause to be paved Pennsylvania avenue. (See 16 Stat. at L., pages 196, 197.) That commission was authorized to levy special assessments upon the Washington and Georgetown Railroad Company, the lessees of the market square between Seventh and Ninth streets, other property holders, and the United States Government for the payment of said pavement; and if these assessments were not paid within thirty days after notification thereof, then, after the completion of the work to the satisfaction of the commission, they were required to issue certificates of indebtedness against the property, which certificates were to bear interest at the rate of 10 per centum per annum until paid, and until paid were to be liens upon the property on or against which they were issued, &c.

These certificates were to be sold by the commission, and the proceeds of said sale were to be applied in payment of the costs and expenses of laying said pavement, or were to be assigned to the contractors who did the work.

In accordance with the foregoing provisions of law, a certificate of indebtedness was issued against the market square for the sum of \$10,721.32, of the date of January 28, 1871, which the lessees of said property refused to pay, claiming the assessment was excessive, and that the property was liable only to the extent it abutted on the said avenue, the assessment being levied upon said property in greater proportion than its frontage upon said avenue. The lessees paid one-half of the assessment, and the question of its further liability was taken to the district court of the District of Columbia, and a unanimous decision was rendered by said court in favor of said lessees. The

suit was commenced March 15, 1875, and decision was rendered October 5, 1880. Number of the case is 13846. The assessment was annulled to the extent of one-half, in consequence whereof the assessment certificate No. 130, for the sum of \$5,360.60, has never been paid, nor is there any way by which it can be paid unless Congress makes provision therefor.

The justice of providing for payment cannot be questioned by any right-minded man. The work was done by the contractor to the satisfaction of the commission. He was paid from funds derived from the sale of the certificates of indebtedness; the purchaser of the same relied upon the act of Congress aforesaid, and the legality of the proceedings of said commission. They were officers of the United States, and, acting in their official capacity, they did acts which the courts have held to be illegal. Now, shall private persons suffer on account of the illegality of said acts? The committee are of opinion they should not, and therefore report the bill affording relief and providing for the payment of said certificate, recommending its passage.

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QUIETING TITLES OF CERTAIN LANDS IN THE DISTRICT
OF COLUMBIA.

JULY 31, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. NEAL, from the Committee on the District of Columbia, submitted
the following

R E P O R T :

[To accompany bill H. R. 5965.]

The Committee on the District of Columbia, to whom was referred the bill (H. R. 5965) to provide for the quieting of the title of the United States in certain lands therein described, report the same to the House with sundry amendments, and recommend its passage as amended.

Said amendments are as follows :

In line 2, section 2, after the word "marshal," insert *of the District of Columbia or*.

In line 2, section 3, strike out "said actions" and insert *the same*.

In line 3 strike out "the same" and insert *them*.

In line 11 insert *and upon hearing, such judgments, orders, and decrees shall be made as may be just and equitable*. Strike out all the remainder of said section after the word "court" and insert *and heard and disposed of without unnecessary delay*.

The committee beg leave to state that a number of claims of ownership is asserted to the banks and bottom of the Potomac River fronting upon the city of Washington, which may hereafter interfere with the making of such improvements in the harbor of Washington as may be found necessary. These claims are not believed by your committee, or other well-informed persons, to be of any validity whatever. Be that as it may, it seems desirable that all claims, whatever they may be, should be ascertained and determined, and the rights of the United States defined, so that whatever action Congress may, in its wisdom, hereafter take in reference to the harbor of Washington or the channel of the Potomac River may not be met by claims of ownership or for damages, which it will be necessary to have examined and reported upon, and perhaps result in litigation, tedious and unpleasant in its character, which may well be determined in the actions authorized by this bill to be instituted.

OUTSTANDING CERTIFICATES OF INDEBTEDNESS.

JULY 31, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. NEAL, from the Committee on the District of Columbia, submitted the following

REPORT:

[To accompany bill H. R. 6277.]

The Committee on the District of Columbia, to whom was referred bill H. R. 6277, submit the following report:

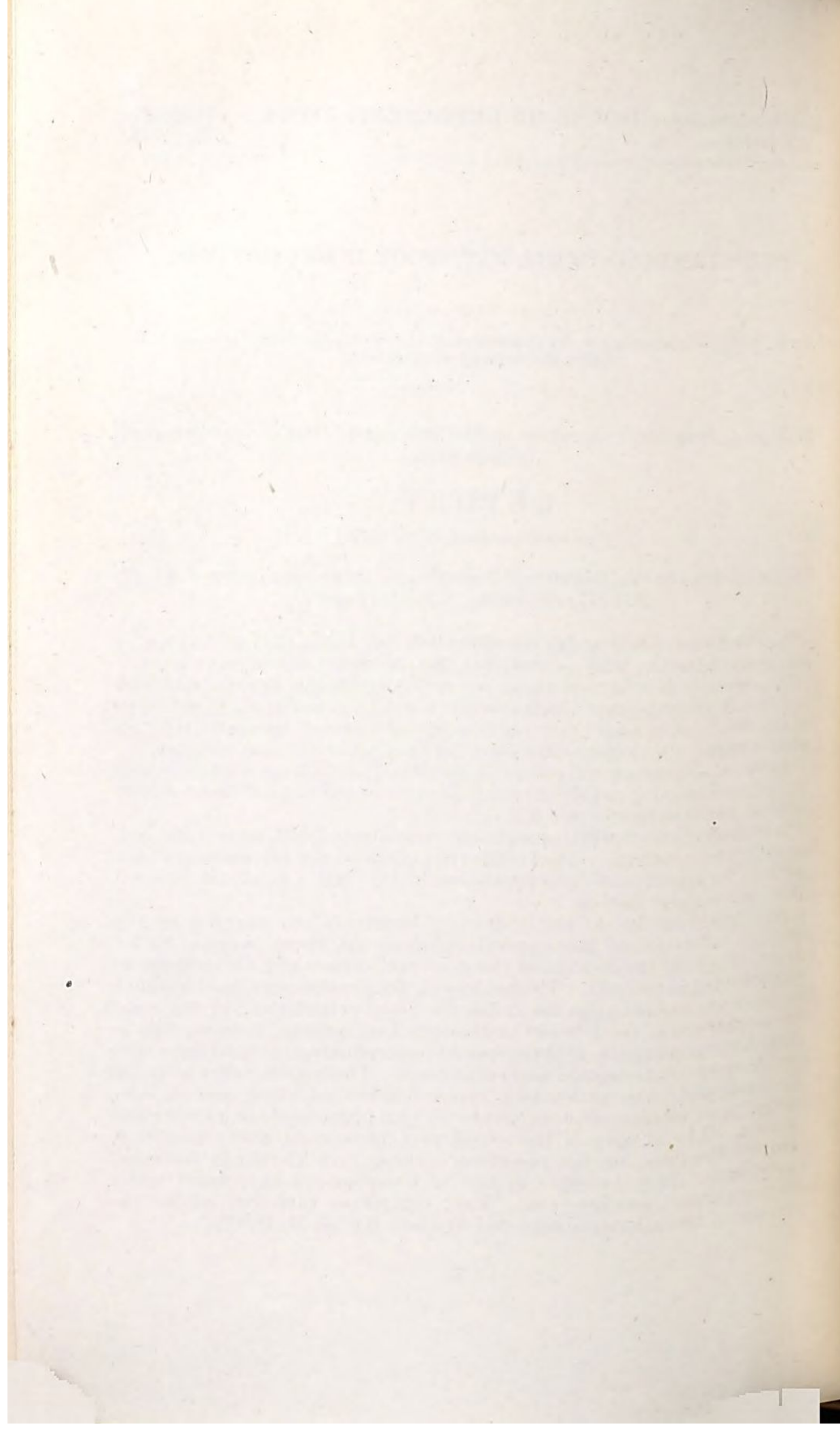
That they have had under consideration bill H. R. 6277 and report a substitute therefor, which substitute they recommend the passage of.

The amount of what are eight per cent. certificates now outstanding is about \$500,000, upon which interest must be calculated, as set forth in this bill. A considerable portion of the interest has been paid by collections of the assessments especially set apart for that purpose.

There is also outstanding about \$260,000 of tax-lien certificates issued by the late board of public works. It is proposed to fund these certificates as provided for in this bill.

It is thought the special assessments uncollected will, when collected, be sufficient to refund to the District of Columbia the full amount of the notes to be issued under the provisions of this bill with all the interest that may be paid thereon.

As the authorities of the District of Columbia are charged by law with the collection of these special assessments, there is great justice in providing for the funding of these several classes of indebtedness as provided for in this bill. The holders of these certificates paid as much as 97½ cents in cash upon the dollar for these certificates, relying upon the assurances of the District authorities that prompt steps should be taken for the collection of these special assessments, and therefrom they should receive payment of said certificates. These assurances have not been realized. The authorities have not collected these assessments, and, as your committee believe, have for years past made but little effort to do so. The holders of the certificates have used every means to secure collections, but are powerless because no authority is conferred upon them. They therefore appeal to Congress for that relief which they can obtain nowhere else. Your committee therefore advise the passage of the substitute reported by them for bill H. D. 6277.



LAND RECORDS OF THE DISTRICT OF COLUMBIA.

JULY 31, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. URNER, from the Committee on the District of Columbia, submitted the following

REPORT:

[To accompany bill H. R. 2934.]

The Committee on the District of Columbia, to whom was referred the bill (H. R. 2934) providing for an improved system for indexing the land records of the District of Columbia, respectfully report:

That they have considered said bill, and from information received, which they consider undoubtedly reliable, they are of opinion there is a very urgent necessity for an improvement in the system of indexing the land records of the District of Columbia. The system heretofore in use simply indexes the first letter of the surnames of the parties to the instruments recorded, imposing great and unnecessary labor upon parties searching titles to real estate, and which would be obviated by the simple and more reliable method proposed by the bill.

There has heretofore been no law requiring the recorder of deeds to give bond for the faithful discharge of his official duties, and as important private interests are involved in the care and fidelity with which said officer performs the duties of his office, the committee are of opinion he should be required to give an official bond, which the committee understand the present efficient recorder is willing to do.

The committee would therefore report back said bill to the House, with a recommendation that it be passed, with the following amendments:

In the third line of the first section, after the word "Columbia," insert the words *within thirty days after the passage of this act, and any recorder of deeds hereafter appointed.*

In the sixth line of the first section strike out the word "thirty," and insert *fifteen* in the place thereof.

In the fourteenth line of the first section, after the word "office," insert the words *upon payment of legal fees.*

In the seventh line of the second section, between the words "the" and "first," insert the words *initial letter and the.*

In the fifth line of the fourth section, between the words "the" and "first," insert the words *initial letter and the.*

DANIEL DONOVAN.

JULY 31, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. URNER, from the Committee on the District of Columbia, submitted the following

R E P O R T :

[To accompany bill H. R. 5614.]

The Committee on the District of Columbia, to whom was referred the bill (H. R. 5614) for the payment to Daniel Donovan for additional labor and services rendered the District of Columbia, recommend that the same be passed.

The accompanying letter of Thomas P. Morgan, Commissioner, and the facts stated in the printed petition of Daniel Donovan, with the accompanying papers, are prayed to be considered as part of this report.

Petition of Daniel Donoran, praying additional compensation for extra services rendered in behalf of the District of Columbia.

WASHINGTON, D. C., April 19, 1882.

To the honorable the Chairman of the Senate Committee for the District of Columbia:

Your petitioner, Daniel Donovan, respectfully represents:

That he is a citizen of the United States and a resident of the District of Columbia. That he has been in the employ of the late corporation of Washington and of the District of Columbia continuously since 1868, and that he is now and has been since the abolition of the late board of audit, in April, 1876, employed in the office of the auditor and comptroller for the aforesaid District.

That, because of his special training as a surveyor and accountant, and his consequent acquaintance with contracts, diagrams, maps, and estimates, previous to his present employment, he naturally became specially interested in claims for extra work, alleged to have been performed by certain contractors under the late board of public works for this District.

That, because of this special fitness as aforesaid, he was, upon the order of the honorable Commissioners of the District of Columbia, assigned as an expert assistant to the attorneys for the said Commissioners on or about the 12th day of June, 1877, to assist in the management of the suits of Samuel Strong against the said District in an additional charge for extra work performed and materials furnished, for which he claimed the gross sum of \$240,000.

That at the time of such assignment, your petitioner's clerical labors in the aforesaid office were comparatively easy and congenial, extending from 9 a. m. to 4 p. m., with the advantages of pursuing his profession during his spare hours; hence this assignment was only accepted on the assurance by express agreement (verbally) of compensation for such expert duty.

That the hearing of the above suits extended from March, 1877, to June, 1878, before Special Auditor Eugene Carusi, of the supreme court of this District, who was appointed by mutual consent of the parties thereto; and that during each daily session of the trial of the suits as aforesaid your petitioner was a constant witness on the stand in reviewing, collating, and comparing books, plans, vouchers, diagrams, maps, and estimates, with a view to successfully combat plaintiff's claims.

That upon the report of the special auditor to the court, on the 3d of June, 1878,

the plaintiff, on exceptions to said report and for want of jurisdiction to refer the case to an auditor, was granted a new trial by jury.

That thereupon, to wit, on the 4th day of September, 1878, your petitioner was again appointed as expert assistant to the attorneys for the District of Columbia, and that subsequently, to wit, on or about the 22d day of August, 1879, he was reappointed, and was again reassured by the president of the Board of Commissioners of this District, as also by counsel for said Commissioners, that he would be liberally compensated for his services.

That immediately upon his appointment as such expert, he commenced the arduous task of preparing for the defense of the now notorious suits, and so continued unceasingly until the close of the trial of the said suits on or about the 20th day of February, 1880, when Judge Wylie pronounced the plaintiff to have no standing in court.

Owing to this special service, your petitioner as such expert as aforesaid was necessitated to work from 9 a. m. one day to 3 and 4 a. m. the following, including Sunday, in preparing counter-evidence to rebut elaborately preconceived allegations, and in this work he was compelled to expend considerable small sums in copying books of accounts, in visiting and consulting in matters relative to particular work and its locations in various parts of the city and Georgetown, thereby depriving your petitioner of the opportunities afforded him during his after-hours, as well as a direct pecuniary loss.

That while he believes in the wisdom of the law forbidding an employé to draw two salaries, he confides in the equity of his claim for additional compensation because of the special and onerous services rendered, and the results achieved, all of which can readily be verified, both by the honorable Commissioners for the District, the special auditor, the attorneys for the defense, and by the records of the supreme court of the District of Columbia.

He therefore prays that the sum of \$1,200 be allowed him for such extraordinary services, in lieu of his disbursements and incidentals while on such special employment, and as full compensation thereof.

And, as in duty bound, your petitioner will ever pray, &c.

DANIEL DONOVAN.

It gives me great pleasure to certify that the services rendered by Mr. Donovan in the trial of the cases referred to above, both before the special auditor and in the supreme court of the District of Columbia, were invaluable and indispensable, and that his labors in preparing and arranging the vast amount of documentary evidence were unceasing, more often than not extending beyond midnight for many consecutive nights.

EUGENE CARUSI.

The trial of the cases of *Strong vs. The District of Columbia* was intrusted to me by Mr. Riddle, the attorney for the District, because his time was occupied in other matters, especially by attendance on the committees of the two houses of Congress. The preparation of the cases occupied much of Mr. Donovan's time for about two months before the trial began, after his usual office hours, and from the 4th of December, 1879, to the 20th of February, 1880, during which time the court was continuously engaged in the case, I have personal knowledge of the fact that Mr. Donovan was engaged in the preparation of testimony from the voluminous records of the District, nearly every night until after midnight. His services were invaluable and his industry and zeal untiring. I am of opinion that he has fully earned the amount he asks for, and I think he should receive it. Mr. Carusi is better informed as to Mr. Donovan's services before the special auditor than I am.

FRANCIS MILLER,

Assistant Attorney District of Columbia.

The above is true and moderately stated. Mr. Donovan rendered important and long-continued service out of hours, for which the proposed compensation is small pay.

A. G. RIDDLE,
Attorney District of Columbia.

As this work was begun while I was still one of the Commissioners of the District, I feel at liberty to commend Mr. Donovan's claim to the favorable consideration of Congress.

S. L. PHELPS.

OFFICE OF THE COMMISSIONERS, DISTRICT OF COLUMBIA,
Washington, May 5, 1882.

SIR: The Commissioners, in response to the communication of the clerk of your committee, dated 4th instant, transmitting to them by direction of the committee the petition of Daniel Donovan for additional compensation, and requesting their opinion of the justice and merits of the application, have the honor to state that they believe the claim of Mr. Donovan to be both just and reasonable, and would, if authorized to do so, cheerfully grant him the relief he asks.

The petition is herewith returned.

By order of the Board.

Very respectfully,

J. DENT, *President.*

Hon. JOHN J. INGALLS,

Chairman Committee on the District of Columbia, United States Senate.

OFFICE OF THE COMMISSIONERS, DISTRICT OF COLUMBIA,
Washington, June 12, 1882.

MY DEAR MR. URNER: Mr. Donovan has a bill for his relief before your committee. It is in every way a meritorious claim, and I would be glad if you will report it to the House. I think then we can get it on the deficiency bill now in the Senate.

Sincerely yours,

THOS. P. MORGAN.

○

ARREARS OF GENERAL TAXES IN THE DISTRICT OF COLUMBIA.

JULY 31, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. URNER, from the Committee on the District of Columbia, submitted the following

REPORT:

[To accompany bill H. R. 6276.]

The Committee on the District of Columbia, to whom was referred the bill (H. R. 6276) to provide for the collection of arrears of general taxes in the District of Columbia, &c., respectfully submit the following report:

The committee respectfully report bill H. R. 6276 back to the House, with the amendments which the committee have made thereto, and recommend the bill, as amended, to the favorable consideration of the House. The bill has received the indorsement of the Commissioners of the District of Columbia, and of the Treasurer of the United States, who is, *ex officio*, the sinking-fund commissioner of said District, and copies of their letters appended hereto, addressed to Senator Ingalls, chairman of the Committee on the District of Columbia in the Senate, are prayed to be taken as part of this report. The amendments which are made to the said bill have been suggested to us by the said United States Treasurer, who has given the bill careful consideration, and on whose complete knowledge of the whole subject-matter of the bill we have largely relied.

The amount of general taxes in arrears and unpaid up to and including the year ending June 30, 1880, is the sum of \$841,000, and, from page 46 of the Fourth Annual Report of the District Commissioners to Congress, it appears that these arrears extend back as far as the year 1845. Any measure, therefore, which will help to clean up these arrears without, at the same time, imposing pecuniary and enforced hardships upon the people, should be welcomed and endeavored to be adopted. By the first section of the bill, parties owing *general* taxes can purchase in open market certain evidences of indebtedness upon the District of Columbia, commonly called assessment certificates, and use them in paying their general taxes in arrears on the 1st day of July, 1880. Parties holding said certificates, in order to sell them, have to submit to a voluntary discount, and they accordingly lose whatever discount they may choose to suffer in their sale. The District receives them from the property holder at their face value and accrued interest, which is 10 per cent. for one year, after which time it receives them at their face value and accrued interest at the rate of 6 per cent. per annum.

The amount of these assessment certificates outstanding in the hands of third parties, as appears by said report of said District Commissioners (page 242), is \$279,009.77, plus a like amount of interest, being an aver-

age interest of between eight and ten years at 10 per cent. per year. When received by the District, they are to be credited to it by the United States upon the books of the Treasury Department, as between it and the said United States, 97½ cents on the dollar of the amount received. This provision is thought to be just, because the District, when it sold these certificates, received par and interest for these certificates less 2½ per cent. commission paid for negotiating their sale, as appears by the correspondence relating to their negotiation on page 6 of Mis. Doc. No. 96, Forty-third Congress, second session.

As these certificates have a representative value behind them, except where affected by revision, in the shape of a specific lien upon the property drawing 10 per cent. interest, as having been issued for certain special improvements, one of the amendments contemplates that nothing in the bill shall affect that lien. It appears by the said report of said Commissioners (page 242) that the representative value has been reduced in principal the sum of \$105,520.59, with the accrued interest at 10 per cent., owing to the execution of the act of Congress of June 19, 1878, authorizing a revision of assessments, and the issue of drawback certificates. The second section contemplated, with the amendment to it, that the Commissioners, after receiving said certificates, shall certify in the same for what amount they are a lien upon the property named therein, that is, what is the amount of the revised assessment. After being audited, under such rules and regulations as the Secretary of the Treasury shall prescribe, whatever certificates appear to be a lien upon certain property are to be turned over to the United States Treasurer, the sinking-fund officer of said District, who collects the amount of the *special* assessments these certificates represent, and applies the same to the redemption of what is known as the 8 per cent. certificates. These latter certificates, were issued by said District, and had pledged for their redemption all assessment certificates issued after May 29, 1873. The said act of Congress of June 19, 1878, authorizing drawback certificates to be issued and received in payment of *special* assessments, impaired the security for the redemption of the 8 per cent. certificates, as also the assessment certificates held by other than the sinking-fund officer. According to said report of said Commissioners (page 242), the amount of 8 per cent. certificates outstanding January 1, 1881, with accrued interest, was \$814,750, and the amount of uncollected special assessments, as revised, pledged to the redemption of said 8 per cent. certificates, was \$684,131.55, making a deficiency of \$130,618.45 in the security for the redemption of said 8 per cent. certificates.

The amount, as before stated, of assessment certificates held by parties other than the sinking-fund officer is \$279,009.77, and the amount of reduction, by revision, being \$105,520.59, the revised certificates would amount to \$173,489.18, which, under the operation of the bill, go to the sinking-fund office, and not only supply the deficiency, but gives a surplus to said sinking-fund office of \$42,870.73, which, under the fourth section of the bill, can be used by the sinking-fund officer for the general purposes of the sinking fund.

It is proper to state that the bill is pre-eminently a relief to the assessment certificates held by third parties. Their security has also been impaired by the act of Congress of June 19, 1878, authorizing a revision of assessments. Pages from 312 to 332, inclusive, of said report of said Commissioners show that in some cases the assessments which were pledged to their payment were reduced 75 per cent., and in other cases entirely wiped out. It is true that drawback certificates were authorized

to be issued for such reduction of the principal sum, but no provision was made for the interest upon the reduction. The parties entitled to said unenviable drawback certificates have accordingly refused to take them.

We therefore recommend the passage of said bill, with the amendments which accompany it.

TREASURY OF THE UNITED STATES,
Washington, June 16, 1882.

SIR: I am in receipt of your letter of the 6th instant, in which you refer to this office for my views Senate bill 1948, "to provide for the collection of arrears of general taxes in the District of Columbia, and for other purposes."

In addition to the ultimate object of the bill as stated in the title, it appears to be its purpose to assume and retire in payment of such arrears of general taxes certain ten per cent. tax-lien certificates issued by the board of public works which were sold in 1871 to such parties as were willing to buy them. The sales were made in all cases, I believe, at a discount from their face value.

These certificates were issued in the exercise of the authority conferred upon the board of public works by section 37 of the act of Congress of February 21, 1871, which provides that such board "shall assess in such manner as shall be prescribed by law, upon the property adjoining and to be especially benefited by the improvements authorized by law, and made by them, a reasonable portion of the cost of the improvement, not exceeding one-third of such cost, which sum shall be collected as all other taxes are collected.

Section 1 of the legislative assembly act of the District of Columbia of August 10, 1871, provides that such assessment shall be "based on a statement of the cost of said improvements, which assessment is to be collected in the same manner that other taxes in the District of Columbia are collected."

Section 2 prescribes the mode of giving notice of said assessment.

Section 3 provides "that if any person or persons, notified as aforesaid, shall neglect or refuse to pay the amount assessed against his or their property as aforesaid after the expiration of thirty days, the said board of public works shall immediately thereafter issue certificates of indebtedness against the property assessed as aforesaid, which certificates shall bear interest until paid at the rate of 10 per centum per annum; and until paid the assessment and certificate shall remain and be a lien upon the property on or against which they shall have been issued, and if the said assessment shall not be paid within one year the said board shall, upon the application of the holder of the certificate of indebtedness, proceed to sell the property against which the assessment and the certificate exist, or so much thereof as may be necessary to pay said assessment. Such sales to be first duly advertised daily for three successive weeks in the regular issue of some newspaper published in the District of Columbia, and to be made by said board at public auction to the highest bidder, and a deed shall be given by the governor, countersigned by the secretary of the District of Columbia, which deed shall be deemed and held to be a good and perfect title to any property bought at any sale hereby authorized. *Provided*, That the owner of such real estate shall have the right to redeem the property so sold by paying the amount of the purchase money and 20 per centum thereon within two years from the date of sale."

Section 3 of the act of May 29, 1873, provides for the payment of such assessment certificates in five equal annual installments.

Through remissness of the District authorities, or some other reason, the collection of these tax liens was never enforced until in the general revision under the act of Congress of June 19, 1878. Assessments for special improvements, including those represented by these 10 per cent. certificates, were so reduced that the certificates no longer represented the value which they represented at the time of sale by the board of public works. This revision and reduction of the principal sum dated back and took effect at the date of the certificates, and thus not only impaired their face value, but reduced the amount of accrued and accruing interest.

The drawback certificates, which the law provided should be issued to cover the amounts deducted from the face of the assessment certificates, were generally refused by the holders of the latter, for the reason that the drawback bore no interest, and were therefore not a full equivalent for the amount lost by revision, and it is therefore to indemnify the holders of such certificates, depreciated by the act of the District authorities, that the bill is introduced.

The general objects of the bill, so far as it contemplates collection of arrears of taxes, the taking up of these assessment certificates, and the application of the taxes repre-

4 ARREARS OF GENERAL TAXES IN DISTRICT OF COLUMBIA.

sented by them to the redemption of the outstanding 8 per cent. certificates of the District, are worthy of approval.

The operation of the bill will be somewhat complicated, from the fact that the assessment certificates will be receivable under it in payment of taxes at face value and accrued interest at 10 per cent. unless that rate is meanwhile modified, but will under it continue to exist as a lien upon the property at the lesser value to which they have been reduced by the District authorities, by revision, running at 10 per cent. interest or some other rate to be fixed by law, until the assessment is collected.

The bill, however, should declare whether the assessment certificates received by the District tax-collector, under its provisions, are to be considered an addition to the revenues of the District, for which the United States shall appropriate an equal amount from time to time. Should it be determined that they are to become the basis of an appropriation by the United States, it is submitted whether the amount of the appropriation should not be reached by deducting from the amount at which they are received by the tax collector under the bill the amount received by the District of Columbia from their sale in 1871. When received by the District for taxes, it is contemplated under the present system of Treasury accountability that they shall be presented to the accounting officers as vouchers in the account of the District Commissioners, and the bill does not provide a method whereby the paid certificates shall find their way into the hands of the Treasurer of the United States to be used under section 2 and their proceeds ultimately applied to the retirement of the outstanding 8 per cent. certificates.

I fear that the difficulty of devising any safe method of reviving an obligation which has been redeemed, and, by the usages of business, should be cancelled and retired, may make the operation of the bill impracticable.

The bill should provide for a certificate to be made by the District Commissioners upon the face of the assessments after their receipt for taxes, setting forth for what amount they shall thereafter be held by the sinking-fund office as a lien against the property described therein. There should also be a date fixed in the bill after which the assessment certificates shall cease to bear 10 per cent. interest in payment of taxes, and after which date they shall either draw no interest or interest at some lower rate, as an obligation of the District, but shall continue to draw the stipulated rate as a lien on the property.

Very respectfully,

JAS. GILFILLAN,
Treasurer of the United States.

Hon. JOHN J. INGALLS,
Chairman, &c., Senate United States, Washington, D. C.

I certify that the foregoing is a true copy of a letter on file in this office.

THOS. J. WHITE,
Clerk Senate Committee on the District of Columbia.

JUNE 20, 1882.

L. R. 85609.

OFFICE OF THE COMMISSIONERS, DISTRICT OF COLUMBIA,
Washington, June 7, 1882.

SIR: The Commissioners, in response to your request of 3d instant for their views upon Senate bill 1948, "to provide for the collection of arrears of general taxes in the District of Columbia, and for other purposes," have the honor to state that the amount of taxes due to the 1st June, 1882, on account of all general tax levies prior to July 1, 1880, is \$840,375.75. The amount of lien certificates outstanding receivable under the bill is about \$232,406.05, and 10 per cent. interest for an average of ten years.

The Commissioners have no objection to offer to the bill, provided it be so amended as to require that the District of Columbia shall be credited, in cash, on the books of the Treasury for all general taxes paid in certificates of indebtedness as contemplated by said bill.

The bill is herewith returned.

By order of the board.

Very respectfully,

J. DENT,
President.

Hon. J. J. INGALLS,
Chairman Committee on the District of Columbia, United States Senate.

AMENDMENT OF SECTION 4702, TITLE 57, REVISED STATUTES.

JULY 31, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. CURTIN, from the Committee on Pensions, Bounty, and Back Pay, submitted the following

REPORT:

[To accompany bill H. R. 3919.]

The Select Committee on Pensions, Bounty, and Back Pay, to whom was referred the bill (H. R. 3919) to amend section 4702, title 57, Revised Statutes of the United States, having had the same under consideration, submit the following:

Section 4702 of the Revised Statutes of the United States provides as follows:

SEC. 4702. If any person embraced within the provisions of sections 4692 and 4693 has died since the 4th day of March, 1861, or hereafter dies by reason of any wound, injury, or disease, which, under the conditions and limitations of such sections, would have entitled him to an invalid pension had he been disabled, his widow, or if there be no widow, or in case of her death, without payment to her of any part of the pension hereinafter mentioned, his child or children, under sixteen years of age, shall be entitled to receive the same pension as the husband or father would have been entitled to had he been totally disabled, to commence from the death of the husband or father, to continue to the widow during her widowhood, and to his child or children until they severally attain the age of sixteen years, and no longer; and, if the widow remarry, the child or children shall be entitled from the date of remarriage.

This bill amends the section by providing that when the widow draws the pension allowed her after marriage in contravention of law, and such child or children continue to reside with her, and are supported by her, their pension shall commence at the date to which the widow was last paid, a change in the law which is obviously just.

It is quite unnecessary to offer reasons for the provision in this law which requires the proof of marriage in accordance with the laws of the place where the ceremony was performed; and that the pension of a widow in notorious adulterous cohabitation should cease from the commencement and during the continuance of such cohabitation, is not only just to the government, but eminently proper on the ground that it is conservative of morality, and relieves the Pension Department of impositions.

The committee, accordingly, recommend the passage of the bill without amendments.

FUNERAL EXPENSES OF LIEUT. JOHN G. KYLE.

JULY 31, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. HENDERSON, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 5495.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 5495) for the payment of the funeral expenses of Lieut. John G. Kyle, submit the following report:

It appears from the papers in this case that about April 1, 1876, First Lieut. John G. Kyle, First United States Cavalry, being absent on sick leave at Xenia, Ohio, where his home was, died from the illness for which he had his leave of absence, leaving no means or property with which his funeral expenses could be paid. The mayor of Xenia telegraphed to the Adjutant-General in reference to the case, and was advised that the government would not take "any action concerning his funeral, unless it should be to bear the reasonable expenses, if not provided from the means of the officer." Thereupon the deceased officer was buried in a decent and respectable manner, and the bills were forwarded to the Adjutant-General for allowance and payment, but it was held that their payment was not provided for in any appropriation. The parties who furnished the goods and performed the service are not able to lose the amounts of their bills, which aggregate about \$175.

In view of all the circumstances of the case, your committee believe the expenses of the burial of this officer ought to be paid, and recommend that the bill do pass.

CANNON TO POST 175, G. A. R., PENNSYLVANIA.

JULY 31, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. HENDERSON, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6779.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 6779) donating condemned cannon, &c., having considered the same, respectfully report the bill back to the House and recommend its passage, amended by inserting the words *cast-iron* after the word "condemned," in line 8.



CANNON TO NEW BRIGHTON, PA.

JULY 31, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. HENDERSON, from the Committee on Military Affairs, submitted the following

R E P O R T:

[To accompany bill H. R. 6776.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 6776) donating condemned cannon and balls, having considered the same, respectfully report the bill back to the House without amendment, and recommend its passage.

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REPORTS OF THE TENTH CENSUS.

JULY 31, 1882.—Recommitted to the Committee on Printing and ordered to be printed.

Mr. SPRINGER, from the Committee on Printing, submitted the following

REPORT:

[To accompany bill S. 2151.]

The Committee on Printing, to whom were referred the reports of the Tenth Census, have had the same under consideration, and beg leave to report as follows:

The House committee adopt the following portions of the report of the Senate committee on this bill:

The Tenth Census is, doubtless, the most extensive and complete that has been taken; more comprehensive in its scope, more minute in its details. Its reports constitute a wonderful exhibition of the population, the resources, the accumulated wealth, and the varied industries of the country. Its preparation has been laborious and costly. The results of the work can be made available only by general distribution among the public libraries, and, to a considerable extent, among individuals.

Of course it has not been possible for the members of the committee to examine with any degree of minuteness the voluminous reports that have been sent to the Government Printing Office, which include only a portion of the work. The committee have been obliged to rely upon the reputation and the representations of the two intelligent and distinguished statisticians under whose direction the work has been performed.

It has, however, been objected that some of the compilations, interesting in themselves, do not properly belong to the enumeration of the census, and that they swell the series of reports to unwieldy proportions. The committee, while feeling the force of this objection, and thinking that some of this work might have been omitted without great disadvantage to the value of the series of reports, do not feel authorized to recommend that their publication be withheld. The expense of their preparation has been incurred, and the work executed under the superintendence of able and accomplished specialists. To refuse the comparatively small cost of printing a reasonable number of them would render useless all the cost of their preparation, and they add highly interesting and valuable information upon the subjects on which they treat. Nevertheless, upon consultation with Colonel Seaton, now the head of the Census Bureau, it has been decided that, while no report or essay shall be omitted, the aggregate can be condensed from 18,000 pages to 15,000, securing a very considerable reduction in cost without loss of interest or value.

The committee therefore recommend that the "usual number" of the complete series of separate reports, reduced to 15,000 pages, be printed, with 10,000 additional copies of the entire series of reports, 20,000 additional copies of the Report on Population, 20,000 additional copies of the Report on Agriculture, 10,000 additional copies of the Report on Manufactures and Mechanics, and the "usual number" of the Compendium, with 100,000 additional copies. This last-named volume will be of the most practical value for popular reference, and the committee would recommend a larger number, but, the work being stereotyped, new editions can be ordered if found desirable.

* * * * *

The entire cost of the publication recommended in the bill which accompanies this report is \$835,461.61.

Estimates of the cost of printing and binding the Tenth Census.

For composition, corrections, and stereotyping the whole series of reports, making 15,000 pages	\$126,599 70
For engraving the same, not yet executed	15,000 00
	141,599 70
For printing, paper, and binding the regular number, 1,900 sets	62,407 50
	204,007 20
For printing, paper, and binding 10,000 sets	\$278,250 00
For printing illustrations for 10,000 sets	50,000 00
	328,250 00
Total cost of composition, corrections, stereotyping, engraving, press-work, paper, binding, and printing illustrations, 10,000 sets and 1,900 sets	532,257 20
The cost of printing additional sets, \$32.82.	
For 20,000 additional copies of the volume on Population (cost per volume, \$1.87½)	37,587 52
For 20,000 additional copies of the volume on Agriculture (cost per volume, 1.80)	36,007 36
For 10,000 additional copies of the volume on Manufactures and Mechanics (cost per volume, \$1)	10,188 22
For composition, corrections, and stereotyping the Compendium	6,163 00
For printing, paper, &c., the regular number, 1,900 copies	916 51
For printing, paper, and binding 100,000 additional copies	48,237 00
Total cost of composition, stereotyping, corrections, printing, paper, binding, engraving and printing illustrations, with the regular numbers, 10,000 sets, 20,000 of the volume on Agriculture, 20,000 of the volume on Population, 10,000 of the volume on Manufactures and Mechanics, and 100,000 volumes of the Compendium	671,356 81
For 1,500 copies of the Census Report on Fish, for the Fish Commissioner ..	2,978 00
For 6,000 copies of the History of the National Loan in the Census Reports, for the Treasury Department	4,289 80
Total	678,624 61

The bill provides a system of distribution which is intended to secure these valuable publications in complete sets to public libraries, as well as to individuals. The provision on this subject is as follows:

That in order to avoid duplication in the distribution of these documents, and to secure complete sets to libraries and other public institutions, the additional copies herein ordered, excepting those ordered for the Treasury Department and for the Fish Commission, be delivered to the document-rooms of the Department of the Interior; and the Secretary of the Interior shall distribute those ordered for the use of Congress as follows: In sets to each of such fifteen libraries and other public institutions or individuals as shall be named to him for this purpose by each Senator, and to each of such ten libraries and other public institutions or individuals as shall be named to him for this purpose by each Representative and Delegate, and in volumes to Senators and Representatives or such other parties as shall be designated by Senators, Representatives, and Delegates, until the quota of each shall be exhausted: *Provided*, That one copy of each volume shall, on its reception from the Public Printing Office, be transmitted to each Senator, Representative, and Delegate in Congress: *And provided further*, That duplicate copies shall not be sent to any library or individual on the request of any Senator or member of the House of Representatives until both Senator and Member shall be notified that they have named the same library or individual: *And provided further*, That the party receiving the work upon the order of a member of Congress shall be informed by the Secretary of the Interior upon whose request it is supplied. And the Secretary of the Interior shall report to Congress at its next session the names and locations of the libraries and other public institutions designated to receive these reports under the provisions of this bill.

ADVERTISING FOR THE GOVERNMENT IN THE DISTRICT OF COLUMBIA.

JULY 31 1882.—Recommitted to the Committee on Printing and ordered to be printed.

MR. SPRINGER, from the Committee on Printing, submitted the following

REPORT:

[To accompany bill H. R. 6800.]

Your Committee on Printing, to whom was referred the bill (H. R. 6800) to amend section 3709 of the Revised Statutes, have had under consideration the same, and beg leave to report it back to the House, and recommend its passage.

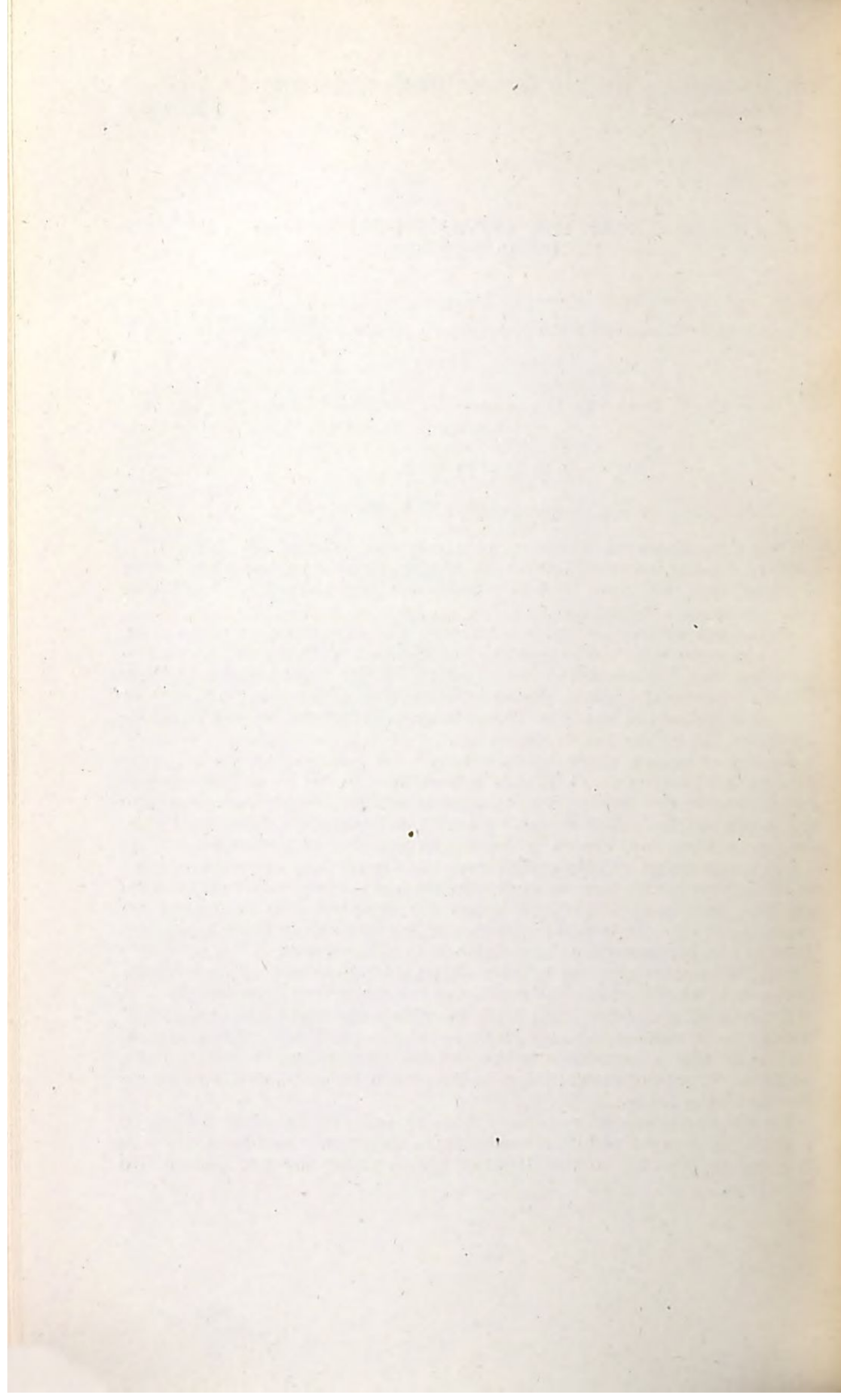
The object of the bill is to empower the President to name three daily newspapers in the District of Columbia—one Democratic, one Republican, and one neutral or independent—which shall publish at their regular commercial rates all advertisements calling for proposals or contracts, under such regulations as to space employed as may be established by the respective departments.

As it now stands, these advertisements are published in such papers outside the District of Columbia as may be selected by a chief clerk of a department, the head of a bureau, or a cabinet officer, and there is no one paper to which persons can turn with an assurance of learning what the government may desire in the way of supplies or proposals.

The amendment recommended would not cover any advertising local in its nature, such as arises under the customs or internal-revenue service, but merely as stated, proposals for supplies and contracts, together with executive proclamations, which are rarely made, and such treaties as are required to be published by their terms.

The increase in expense will be slight, as the extent of each advertisement is wholly within the control of the respective department. As in the case of post-office mail lettings, which are quite lengthy, and of which an epitome of from ten to sixty lines is published, calling the attention of mail contractors to the detailed service, so in the case of a long list of supplies required, a notice could be published calling attention to the same.

The change proposed puts the District papers on the same footing in relation to general public advertising as they now stand in relation to advertising peculiar to the District alone, under the law passed two years ago.



PETER TARGARONA.

JULY 31, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUCHANAN, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1593.]

The Committee on Claims, to whom was referred the bill (H. R. 1593) for the relief of Peter Targarona, having considered the same, respectfully submit the following report, heretofore made by the Senate Committee on Claims, which this committee accepts as its report.

[S. Rep. 198, 47th Congress, 1st sess.]

The Committee on Claims to whom was referred the bill for the relief of Peter Targarona, having considered the same, respectfully submit the following report:

The committee find the following facts:

That the claimant, Peter Targarona, in July, 1865, was the owner of the steamboat Capitol, her tackle, apparel, and furniture.

That Targarona was then an unnaturalized resident in the city of New Orleans and State of Louisiana, and a native of Spain.

That on July 3, 1865, Rufus Waples, as attorney of the United States for the eastern district of Louisiana, on behalf of the United States, and Charles Black, sr., informant, filed a libel of information in the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana against the steamboat Capitol, her tackle, apparel, and furniture, in a case of seizure and forfeiture, under the act of Congress approved August 6, 1861, entitled "An act to confiscate property used for insurrectionary purposes."

That Cuthbert Bullett, as United States marshal, acting under the authority of an admiralty warrant issued from said circuit court on said libel of information, seized and took into his possession the said steamboat Capitol, her tackle, apparel, and furniture.

That the same were duly claimed by said Targarona, who applied to said court to release said steamer, &c., to him on bond.

That, on motion, the court ordered an appraisement of the steamer Capitol, her tackle, apparel, and furniture, which was done, and reported to the court at \$8,000.

That, on the order of said court, Targarona gave bond and security conditioned as the law directs, and resumed possession and control of his said steamboat, &c.

That afterwards the steamboat, while running on the Red River, in the service of her said owner, was sunk by accident, and became a total loss.

That on the trial of the libel suit judgment of condemnation and forfeiture was rendered by said court on the 10th day of January, 1866, against said steamboat, her tackle, apparel, and furniture.

That the claimant, not being able to deliver said steamboat, on account of her loss, judgment was rendered by said court on said release bond against Targarona and his sureties for \$8,000.

That, on motion, said court granted Targarona an appeal to the Supreme Court of the United States, on his executing bond with sureties in the sum of \$12,000, conditioned to prosecute the appeal and satisfy whatever judgment might be rendered against them if they were cast in the appeal.

That said suspension appeal was granted on the 2d day of February, 1866, and notice thereof served by the United States marshal on the district attorney February 8, 1866.

That on the application of the district attorney an execution of *fiery facias* was issued from said court the 7th day of February, 1866, against said Targarona and his sureties on said release bond for \$8,000 and \$357.85 costs of the libel suit; that said execution was levied by said marshal on the steamboat Live Oak as the property of said Targarona; that under order of the said circuit court the steamboat Live Oak, her tackle, apparel, and furniture were appraised on June 14, 1866, at \$18,000; that the appraisers appointed by said circuit court found that the steamer Live Oak cost said Targarona \$25,000, and that he expended for repairs \$15,000; that under said execution said marshal sold said steamer Live Oak, &c., at public outcry on the 22d day of May, 1866, for cash, at the sum of \$8,300, and paid the same into said circuit court in current funds of the United States on the 25th day of May, 1866; that at the December term, 1867, of said circuit court, judgment was rendered in favor of divers persons as intervenors and libelants in said case against said proceeds of said steamer Live Oak for the amounts by them claimed, respectively, and which is established in the following classification, &c.:

That the several sums due by said Targarona to said several intervenors for wages as employes on said steamer Live Oak, and for material and supplies furnished him, amounted in the aggregate to \$6,729.15, which said circuit court ordered to be paid said intervenors out of the proceeds of the sale of said steamer Live Oak; and the balance of said proceeds, amounting to \$1,570.85, the said circuit court applied to the payment of the costs and charges incurred in said libel proceedings, and for which the United States became liable on the reversal by the Supreme Court of the United States of the judgment of said circuit court, condemning said steamboat Capitol as aforesaid, and the dismissal of said libel of information out of said circuit court; that at the December term 1868 of the Supreme Court of the United States the said suspension appeal cause came on to be heard before the said Supreme Court, when it was ordered, adjudged, and decreed that the said decree of said circuit court in said libel proceedings against said steamboat Capitol be and the same is hereby reversed, and that said cause be remanded to said circuit court with directions to dismiss the libel of information. The judgment reversing and dismissing said decree and information is dated March 22, 1869. The proof accompanying the petition of claimant to Congress for relief greatly preponderates to show that the steamer Live Oak, her tackle, apparel, and furniture, were worth more than double the amount of \$18,000, at which they were appraised under the order and direction of the circuit court.

When the appeal to the Supreme Court in the confiscation case came on to be heard, the only question considered and passed on by the court was, on the motion of Mr. Evarts, Attorney-General, that the judgment of the circuit court be reversed, and the cause remanded with instructions to dismiss the libel of information. In rendering the opinion on the motion of Mr. Evarts, which was resisted by the informer, the court say (7 Wallace Rep., 454):

"Although the name of the informer is mentioned in the libel of information, still it is nevertheless true that the suit was instituted by the district attorney in the name and for the benefit of the United States. Control of the suit, therefore, while it was pending in the circuit court, belonged to the district attorney under the general superintendence and direction of the Attorney-General, and he might, if he had seen fit, have discontinued it at any stage of the proceedings prior to the appeal. Such control on the part of the district attorney ceases whenever such a suit, civil or criminal, is transferred to this court by writ of error, appeal, or certificate of division of opinion, as the 35th section of the judiciary act also provides that it shall be the duty of the Attorney-General to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned."

It is clear, then, that after granting the appeal, and the execution of the appeal bond, all further proceedings in the circuit court to execute its decree of condemnation of the steamer Capitol were suspended until the final decision of the Supreme Court. The issuance of the execution of *fiery facias* from the circuit court was wholly unauthorized, and in contempt of the supreme order of the circuit court. The district attorney ordered the clerk to issue the execution after the suspension order of appeal was granted, and after the execution of the suspensive bond, of which order and giving of the bond he had written notice the day after said execution was issued. The clerk knew of the suspension order and the execution of the appeal bond, and so did the United States marshal; and the district attorney, clerk, and marshal well knew that the seizure and advertisement and sale of the steamer Live Oak were in violation of the order of the circuit court suspending all further proceedings in said libel of information. It is equally certain that the claimant Targarona was also fully informed that the issuance of the execution and the seizure and sale of his steamboat were wholly unauthorized, and that all he was required to do to arrest the proceedings which terminated in the sale of his steamboat, was to apply to the judge of the said circuit court to supersede and quash said execution.

It is remarkable that with full knowledge of the suspensive order of the circuit court, and of the pendency of his appeal, the claimant should have made no effort whatever to protect himself against the open defiance of the order of the circuit court by the district attorney, clerk, and marshal, when his remedy was plain and adequate, and if unknown to him must have been familiar to his attorney, who was present with him in the same city where his rights were openly disregarded.

There is another equally remarkable feature in the proceedings on the libel of information.

The Supreme Court say in the opinion *supra* that "judgment in the circuit court is for the complainants or for the United States; and if for the latter, and the claimants do not remove the cause into this court for revision, it then becomes the duty of the circuit court to render the decree for distribution."

Notwithstanding the cause was removed to the Supreme Court for revision, while it was pending there on a suspensive appeal, the circuit court, Judge Wood presiding, entertained jurisdiction of the petitions and libels of information against the proceeds of the sale of the steamer Live Oak, and condemned the proceeds to the payment of all the costs in his court and rendered judgment of distribution of the balance among the intervening creditors of Targarona.

It may be that the intervenors proceeded by petition or otherwise to enforce their prior lien on the Live Oak or the proceeds of its sale, to satisfy their claims for wages, supplies, and material furnished Targarona. And it may not have been brought to the attention of the circuit court that a suspensive appeal had been taken prior to the sale of the Live Oak and the payment of the proceeds into court. As Targarona must have had notice of the proceedings by the intervenors to ascertain the amount of his indebtedness to them and to obtain judgment of condemnation of the proceeds of the sale of the Live Oak to their claims, the failure of Targarona to bring to the notice of the court the illegality of the sale of his steamboat may stop him from setting up the illegality of the sale as a foundation for his claim against the government.

There is no evidence of any attempt by Targarona to enforce any remedy he had against the clerk or marshal. Nor is there any proof that Targarona attended the sale of his steamboat to notify bidders of the illegality of the sale, which he could have done, and entitled himself to bring suit against any purchaser of his steamboat to recover the boat itself or its value.

Targarona made no effort to reimburse himself for his alleged losses out of the United States, except by his petition to Congress, filed January 31, 1876.

Several questions of law arise on the facts found by the committee.

1. Were the acts of the clerk and marshal in issuing the execution of *fieri facias*, and the sale under it by the marshal of the steamer Live Oak, void or voidable? and, if either, can the United States be held responsible in justice and equity for the losses resulting from the illegal and unauthorized acts of its agents? If voidable only, and done under color of authority, ought the United States to reimburse those who suffer from such acts when it is manifest that the injury could have been prevented by the use of ordinary diligence in resorting to plain, adequate, legal remedies?

2. Was Targarona compelled by law to resort to his legal remedies against the wrongful acts of the clerk and marshal in issuing the execution and selling the steamer Live Oak?

3. The libel of information being wrongful, and the United States being bound by the acts of the district attorney in filing such libel of information and in ordering the admiralty warrant under which the Capitol was seized and taken possession of by the marshal, ought the United States to be heard to require of the injured party that he should have protected himself against the wrong in selling his other steamboat by resorting to his legal remedies?

4. Has the original actor in a wrongful judicial proceeding the right to escape liability by charging the sufferer with contributory negligence?

5. If the United States are liable for anything, to what extent? Does the liability go beyond the amount of the cost and charges paid out of the proceeds of the sale of the Live Oak, and for which cost and charges the United States became liable when the judgment of the circuit court was reversed and the libel of information ordered to be dismissed?

The Supreme Court in the opinion *supra* say:

"Under the rules of the common law it must be conceded that the prosecuting party may relinquish his suit at any stage of it, and withdraw from court at his option, and without other liability to his adversary than the payment of taxable costs which have accrued up to the time when he withdraws his suit. Precisely the same rule prevails (say the court) in the admiralty courts, and consequently the libellant has the right at any stage of the cause to discontinue the same, and the only penalty to which he can legally be subjected in the absence of any statutory regulation, except, perhaps, in prize cases, is the payment of the costs of the proceedings."

To the extent that the proceeds of the sale of the Live Oak were applied to the payment of the honest debts of Targarona, the United States, in any event, should

not be held responsible. But the balance of the proceeds of said sale have gone to the payment of costs and charges for which the United States were liable on the reversal of the judgment of the circuit court and the dismissal of the libel of information, and as to that amount (\$1,570.85) the claimant should be reimbursed unless he has lost his right by failing to make timely application to Congress for relief. As to all the other questions presented your committee express no opinion. And after due consideration of all the facts and the character of the legal questions in the case, your committee feel constrained to report back Senate bill No. 522, with a recommendation that it pass.

O

MARY S. STONE, ADMINISTRATRIX.

JULY 31, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUCHANAN, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 4482.]

The Committee on Claims, to whom was referred the bill (H. R. 4482) for the relief of Mary S. Stone, administratrix, having carefully considered the same, submit the following report:

Charles Stone was contractor on mail route No. 7025, in the State of Alabama, for the period from October 1, 1859, to May 31, 1861, at the rate of \$2,556 per annum. His account has been paid in full to include December 31, 1860. The service has been certified May 31, 1861, the date when service was discontinued, and there was then due to Charles Stone \$1,067.34, less \$229.31, collected from postmasters in the first quarter of 1861, and the claim of Messrs. Abbott, of Boston, amounting to \$209.51. The claim cannot be paid until Congress makes an appropriation for that purpose.

These facts appear from the letter of J. H. Ela, Auditor of the Treasury for the Post-Office Department, addressed to Hon. N. J. Hammond, under date of February 14, 1882, which is made part of this report.

Charles Stone departed this life, and on the 1st day of March, 1870, Mary S. Stone, his widow, was duly appointed administratrix on his estate, as fully appears by letters of administration duly and properly certified, which are hereto attached as part of this report. That Charles Stone and Mary S. Stone were loyal to the Government of the United States during the rebellion, as appears from the affidavits of Matthew J. Harris and James A. Grace, and the certificate of Jeff Holley, which are hereto attached as part of this report. Your committee think the evidence conclusive that the claimant, Mary S. Stone, as administratrix of her late husband, Charles Stone, is entitled to, at least, the sum of \$628.52, and recommend that this amount be inserted in the blank in the third line of the bill, and that the bill when so amended do pass.

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT,
Washington, February 14, 1882.

SIR: In reply to your letter of the 13th instant, inclosing letter of William D. Stone, of Forsyth, Ga., making inquiry relative to the account of Charles Stone for mail service, I have the honor to inform you that Mr. Stone was contractor on route No. 7025, in the State of Alabama, for the period from October 1, 1859, to May 31, 1861, at the

rate of \$2,556 per annum. His account has been paid in full to include December 31, 1860. The service has been certified to May 31, 1861, the date when it was discontinued, and if payment should be allowed to that date there will be due Mr. Stone the sum of \$1,067.34, less \$229.31, collected from postmasters in the first quarter of 1861, and the claim of Messrs. Abbott, of Boston, amounting to \$209.51.

The claim cannot be paid until Congress makes an appropriation for that purpose. The letter of Mr. W. D. Stone is herewith inclosed.

Very respectfully,

J. H. ELA, *Auditor.*

Hon. N. J. HAMMOND,
House of Representatives.

STATE OF ALABAMA,
Tallapoosa County :

Letters of administration on the estate of Charles Stone, deceased, are hereby granted to Mary S. Stone, who has duly qualified and given bond as such, and is authorized to administer said estate.

Dated this 1st day of March, 1870.

ALLEN D. STURDEVANT,
Judge of Probate.

THE STATE OF ALABAMA,
Chambers County :

On this 8th day of February, 1870, personally came Matthew J. Harris and James A. Grace, who, being duly sworn according to law, declare that they are loyal citizens of the State and county aforesaid; that they did not in any way promote, encourage, or sustain the late rebellion, but were opposed thereto and in favor of its suppression; that they were personally acquainted with Charles Stone, deceased (mail contractor on route No. 7025, from Cusseta to Oxford or Jacksonville, Ala.); and that he conducted himself during the late rebellion as a loyal citizen of the United States, and from their knowledge they believe him to have been opposed to the rebellion and distinctly in favor of its suppression during the period of its continuance.

MATTHEW J. HARRIS.
JAMES A. GRACE.

THE STATE OF ALABAMA,
Chambers County :

On this 8th day of February, 1870, personally came Matthew J. Harris and James A. Grace, who, being by me duly sworn according to law, declare that they are loyal citizens and residents of the State and county aforesaid; that they did not in any manner promote, encourage, or sustain the late rebellion, but were opposed thereto and in favor of its suppression; that they have been personally acquainted with Mary S. Stone (widow of Charles Stone, deceased) since the 13th day of April, 1861, and that she conducted herself during the late rebellion as a loyal citizen of the United States, and from their knowledge of her they believe her to have been opposed to the rebellion and distinctly in favor of its suppression during the period of its continuance.

MATTHEW J. HARRIS.
JAS. A. GRACE.

Sworn to and subscribed before me on the day and year first above written; and I hereby certify that Matthew J. Harris and James A. Grace are credible persons, and from my knowledge of them believe them to have been opposed to the late rebellion and in favor of its suppression, and that they are now and ever have been loyal to United States Government.

In witness whereof I have hereunto set my hand and affixed the seal of my office at Lafayette, this 8th day of February, A. D. 1870.

[SEAL.]

JNO. APPLEBY,
Judge of Probate for Chambers County, Alabama.

STATE OF ALABAMA,
County of Tallapoosa :

On this 12th day of February, 1870, personally appeared before me Mary S. Stone, widow of Charles Stone, deceased, a resident of Dadeville, in said county and State, who, being duly sworn according to law, declares that she did not in any way pro-

mote, encourage, or sustain the late rebellion, but that she was opposed thereto and distinctly in favor of its suppression.

MARY S. STONE.

Sworn to and subscribed before me this the 12th day of February, 1870.

ALLEN D. STURDEVANT,
Judge of the Probate Court for said County.

STATE OF ALABAMA,
Tallapoosa County :

I hereby certify that I have been personally acquainted with Mary S. Stone, widow of Charles Stone, deceased, who signed the foregoing affidavit, since the 13th day of April, 1861; and that she conducted herself during the late rebellion as a loyal citizen of the United States; and that from my knowledge of her I believe her to have been opposed to the rebellion and distinctly in favor of its suppression during the period of its continuance.

February 12, 1870.

JEFF HOLLEY,
Assistant Assessor of Internal Revenue, second district of Alabama.

○

DR. WALTER REED.

JULY 31, 1882.—Laid on the table and ordered to be printed.

Mr. BUCHANAN, from the Committee on Claims, submitted the following

R E P O R T :

[To accompany bill H. R. 4194.]

The Committee on Claims, to whom was referred the bill (H. R. 4194) for the relief of Dr. Walter Reed, submit the following report :

The claimant, Dr. Walter Reed, claims, for services rendered while a surgeon in the United States Army and receiving pay as such, to receive the pay allowed by law for discharging the duties of physician to the White Mountain Apache Indians on the San Carlos Reservation, Arizona. This claim comes under the provisions of section 1765, Revised Statutes. Your committee believe it will be unwise to depart from the policy set forth in that section, and therefore recommend that the bill do not pass.

○

WILLIAM A. COURTNAY.

AUGUST 1, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MCKINLEY, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 6885.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 6885) for the relief of William A. Courtney, agent of the Clyde line of steamers, submit the following report:

The accompanying bill authorizes the Secretary of the Treasury to receive from the agent of the Clyde steamers an appeal from a decision of the collector of the port of Charleston, S. C., rendered several years ago, and by which certain port charges were exacted from and paid by the company into the Treasury of the United States. A bill identical with that herewith reported was favorably considered by the Committee on Ways and Means at the last session of Congress and reported to the House (see House Report 1265, Forty-sixth Congress, second session). In this report the committee said:

There is no doubt that the fees charged against the Clyde steamers were not due under any law. Upon inquiry, that is admitted by the Treasury officials. The vessels were engaged in the coastwise trade, and were sailing under enrollment and license. The fees for port entry were only due by foreign vessels. By some mistake of the officer the fees were exacted and paid, the owners or their agents supposing the demand was legal under the literal terms of the law. In 1877 the special agent of the Treasury directed they should be no longer demanded, because they were illegal. Thereupon an appeal was made to the Treasury, but the department could not refund in the absence of protest. The committee do not think the lack of protest should in such a case of demand of small fees be a bar to an appeal to Congress. The officer exacted fees not demandable by law, and did so by mistake, and they were paid under mistake.

Your committee, after examination of the facts, adopt the report above quoted, and recommend the passage of the accompanying bill, which simply authorizes the Secretary of the Treasury to hear the appeal and refund the fees exacted, if such fees were not legal, notwithstanding the lapse of time and absence of protest.

1874-1875

REPORT

of the

Commissioners of the

LAND OFFICE

for the year ending

at the close of the

year

1875

CHILI-PERU.

AUGUST 1, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. C. G. WILLIAMS, from the Committee on Foreign Affairs, submitted the following

REPORT:

The Committee on Foreign Affairs, to whom was referred a resolution of the House of Representatives, relative to certain missing papers from the files of the Department of State, and also directing inquiries to be made as to the connection of one or more ministers plenipotentiary of the United States with business transactions in which the intervention of the United States was requested between Chili and Peru, have had the same under consideration, and submit the following report:

On the 24th of February, 1882, the following preamble and resolution were adopted by the House of Representatives:

Whereas it is alleged in the Chili-Peruvian correspondence recently and officially published, upon the call of the two houses of Congress, that one or more ministers plenipotentiary of the United States were either personally interested or improperly connected with business transactions in which the intervention of this government was requested or expected; and

Whereas it is further alleged that certain papers in relation to the same subjects have been improperly lost or removed from the files of the State Department: Therefore,

Resolved, That the Committee on Foreign Affairs be, and they are hereby, instructed to inquire into the said allegations, and ascertain the facts relating thereto, and report the same, with such recommendations as they may deem proper, and they shall have power to send for persons and papers.

On the 16th day of March, 1882, the following supplementary resolution was also adopted by the House:

Resolved, That the Committee on Foreign Affairs be directed to demand from Jacob R. Shipherd, of New York, copies of all correspondence between himself and any person or persons whatsoever, and all papers and other evidence in his possession tending to show what said Shipherd did or attempted to do to enforce the claim of the Peruvian Company or to induce the United States to enforce this claim against Peru.

These two resolutions constitute the authority under which the committee have prosecuted the investigation. The nature and extent of the authority conferred by the latter resolution will be considered hereafter.

MISSING PAPERS.

The missing papers have not been found. They consisted of eight letters, indexed at the Department of State, as follows:

Mr. Shipherd to Mr. Blaine, May 21, 1881:

"Peruvian Company, organized for the purpose of paying the claims of American citizens against Peru for violation of guano contracts, foreign bondholders, Chilean war indemnity, &c., providing Peru will give it the right to work guano-beds, &c.; prospectus of company with other papers inclosed; requests protection of the United States."

Mr. Shipherd to Mr. Blaine, May 25, 1881:

"Peruvian Company, prospectus of, with other papers inclosed; asks that the documents be presented to Mr. Hurlbut, and that he be granted an interview before Ministers Kilpatrick and Hurlbut go to their posts."

Mr. Shipherd to Mr. Blaine, May 31, 1881:

"Peruvian Company, refers to conversation had with the United States minister to Peru, and states that they are ready to advance money to Chili, &c., providing the United States will support them in their legal and equitable rights, &c.; desires a personal discussion with President and Secretary of State relative to."

Mr. Shipherd to Mr. Blaine, June 4, 1881:

"Peruvian Company, transmits letter of 2d instant, addressed to S. A. Hurlbut, United States minister to Peru, giving his observations concerning the plans, intentions, and wishes of the company in their claim to the ownership of the guano deposits discovered by Cochet, &c., and requesting minister's comments thereon."

Mr. Shipherd to Mr. Blaine, June 21, 1881:

"Peruvian Company, submits a translated reprint of an old Peruvian pamphlet relative to Cochet guano claim."

Mr. Fisher to Mr. Evarts, July 13, 1879:

"Neutrality of the United States in the Chili and Peru-Bolivian war; torpedo-boat shipped from the United States to Peru was seized by request of Chilean consul at Panama; other shipments of similar nature are expected; suggests that the United States consul at Aspinwall be instructed to examine suspicious-looking packages."

Same to same, July 14, 1879:

"War between Chili and Peru-Bolivia, progress of; recent engagements; general review of the position of the belligerents."

Same to same, November 7, 1879:

"War between Chili and Peru-Bolivia; reports progress of."

Mr. Shipherd has furnished the committee with copies of the various letters written by him, and after examining him with reference to their contents the committee believe them to be accurate copies of the originals, and the same are now on file in the Department of State. What are believed to be correct copies of the original Fisher letters have also been supplied, with the exception of a letter of the 13th of July, 1879. These copies are also on file at the department. The officers and employés having these papers especially in charge, have been examined by the committee as to their knowledge of the same, the manner in which such papers are received and indexed in the department, in whose custody they are placed, and how and by whom they may be withdrawn from such custody; and after such examination, and also the examination of all other persons who would be likely to have knowledge of such papers, by having them in their possession, or otherwise, the committee are of the opinion that none of these papers were surreptitiously taken from the files of the department or carried away or destroyed or suppressed for any improper purpose, but have been lost or mislaid in the ordinary routine of the department. They are further of the opinion that the papers were not of such character or importance as to furnish a motive for purloining them from the files, or for destroying them. Their loss will doubtless suggest the propriety of greater caution in the future, on the part of those having such papers in charge, and also those into whose possession they may come for the purpose of examination.

MINISTERS PLENIPOTENTIARY.

The principal inquiry with which the committee is charged is "whether one or more ministers plenipotentiary of the United States were personally interested in, or improperly connected with, the business transactions in which the intervention of this government was requested or expected" in the affairs of Chili and Peru. The discussion of this branch of the inquiry may be divided under three heads.

First. The condition of affairs in Chili and Peru which gave rise to the correspondence and business transactions referred to in the resolutions.

Second. The history and claims of the parties who requested the intervention of the United States in the affairs of Chili and Peru.

Third. Investigation as to the connection between ministers plenipotentiary of the United States and these parties, or any business transaction in which they requested or expected the intervention of the United States.

CHILI AND PERU.

The condition of the South American states, especially of those upon the western slope of the Andes, has always been unsettled. Earth quakes convulse their soil and revolution their social and political institutions. Chili and Peru have divided the greater part, four-fifths, perhaps, of the strip of territory west of the Andes between them. Bolivia had access to the ocean between the 23d and 25th degrees of south latitude. Chili always disputed with Bolivia as to the width of this territory. Its value, except for access to the ocean, consisted chiefly in the deposits of fertilizers, both animal and mineral. The territory lying immediately north of this disputed strip, belonging to Peru, was of the same description. In 1864 Chili and Bolivia, under pressure of a common danger from Spain, endeavored to harmonize these boundary disputes by treaty. They agreed to the 24th degree of south latitude as the limit of territory absolutely admitted to belong to Bolivia, leaving both nations to occupy the remainder by quasi tenancy in common. Bolivia, however, agreed to impose no export duties upon the business of Chilians engaged in developing the guano and nitrate trade in the territory which had been in dispute. This vague adjustment did not allay the jealousy and distrust of the powers. Chili, although smaller in territory and population, was more enterprising and energetic. A further attempt at treaty settlement was made in 1874, but with no greater success than the first. Late in the year 1878 Bolivia imposed a tax upon all exportations of nitrates. Chili claimed that this was in violation of the treaty. Bolivia persisted, and caused the property of non-paying persons and corporations to be advertised for sale. Chili immediately declared war and occupied with her troops the disputed territory, and declared that all the treaty provisions were terminated on account of this imposition of taxes by Bolivia. Peru and Bolivia had made a secret treaty in 1873, guaranteeing the integrity of each other's territory, and agreeing to an alliance in case of war. Chili claimed, as was probably the fact, that this alliance was intended against herself, and demanded of Peru a declaration of neutrality. Peru refusing to make the declaration, Chili declared war against her May 8, 1879, and immediately threw her forces upon the unprotected Peruvian points. Henceforth active hostilities were carried on, principally between Chili and Peru, with almost constant success with Chili. The

constitutional government of Peru, failing to satisfy the more warlike portion of the nation, was displaced in December, 1879, and Pierola was proclaimed war dictator. On the final defeat of Pierola, and his flight to the interior, an attempt was made by the more conservative Peruvians, as was supposed with the good will of Chili, to establish a provisional government with Calderon as President. This government was recognized by the United States; but for some reasons, perhaps not fully apparent, Calderon was deposed and imprisoned by the Chilians in November, 1881, and they have since had military occupancy of Peru. Less than two years of fighting brought Peru to the feet of the Chilians, and out of this war and the condition of Peru during and since its active prosecution have grown the circumstances which gave rise to this correspondence with Peru. American and European capitalists were largely interested in all the belligerent countries, European much the more extensively. The United States, as the most powerful American state, and as the first of them to establish republican institutions, was held largely responsible for all international duties and liabilities devolving upon a power friendly to all the belligerents, and especially by its power and position, occupying to some extent the place of adviser, mediator, and possibly of ultimate arbitrator. It is alleged that from the beginning Chili was largely under English influence. Be that as it may, there can be little doubt that as the fortunes of war steadily set against Peru, her people looked to the United States for sympathy, if not actual interference in her behalf, while Chili, with her uniform success, became jealous of the power to which her rival looked for aid.

As the war progressed, adversely to Peru, holders of her bonds, and other creditors, real or pretended, and speculators, seeking to take advantage of her distress, were naturally interested in her affairs. It was evident that, overborne by Chili, she must either lose her autonomy, submit to a cession of territory, or provide for the payment of a heavy war indemnity. Rightly or wrongly, it was believed that the United States would have more influence than any of the powers in deciding which of these results should prevail. To her, therefore, the interested parties turned their attention and sought by various methods her intervention in their behalf. We divide these into three:

First. The Cochet claimants.

Second. The Landreau claimants.

Third. The Crédit Industriel.

A brief description of each will suffice.

Alexander Cochet was a Frenchman, and remained a subject of France until the time of his death. It is claimed that he was a scientist, and that by a series of chemical and scientific tests conducted in Peru he, in 1840, discovered the uses of guano, and especially its fertilizing properties, and thereby gave it great commercial value; that under a law of Peru of 1833, which provided that "any one who should discover property belonging to any suppressed convents, or other property belonging to the state, shall have a right to one-third part of said property," he was entitled to one-third part of the guano of Peru, worth at least \$500,000,000. Cochet returned to France in 1853, and died in a Paris almshouse in 1864. He left an illegitimate son, born and living in Peru, by the name of Gelacio Cochet. He, it is alleged, inherited this claim against Peru from his father, and from him, by assignment, the Peruvian Company claims title. The Peruvian Company claimed to own and to have organized under a charter granted by the legislature of Georgia. The salient facts relating to this claim are well and tersely summarized by the Hon. Stephen A. Hurlbut, the late American min-

ister to Peru, who, writing of it from the United States legation at Lima, under date of February 27, 1882, says:

In reference to the "Cochet claim," which, I understand, is the foundation of the "Peruvian Company," I desire to state for your information, or for any committee of either house which may choose to examine it, certain principal and controlling facts.

1. Alexander Cochet was a French subject—lived such and died such.
 2. His supposed heir, his illegitimate son, through whom the company claim, was never legitimized, or at all events I have no evidence of it.
 3. In that case, Cochet's rights, if any, descend to his sisters living in France.
 5. Granting that Cochet had a claim and that it was properly transferred to the "company," still it was a French claim; and the company, having acquired nothing but a litigation, is not within the protection of the United States, which is only given for injuries and wrongs inflicted upon American citizens.
 6. There never was any law of Peru applicable to a case like that of Cochet, which gave "one-third to a discoverer." It is a grievous misconception. The law relates only to "*concealed* property," and was given after the suppression of the convents, to encourage the discovery of property belonging to such convents "*hidden and concealed*."
 7. Cochet himself in his lifetime never made any such claim.
 8. The whole question is "*res adjudicata*." The claim of Cochet was presented in 1861, before a mixed commission of Peruvian and French citizens, appointed under a convention for that purpose.
- That commission examined into the case and decided adversely to the Cochet claim. This decision is a public record in the French legation and Peruvian archives. I give you these statements in case there shall be an examination before I return.

THE LANDREAU CLAIM.

Jean Theophile Landreau, a French citizen, claiming to be in partnership with his brother, J. C. Landreau, an alleged citizen of the United States, about 1844, made a series of scientific explorations in Peru by which he discovered new deposits of nitrates and guano, both on the main land and adjacent sea islands, amounting in value, as claimed, to not less than \$400,000,000. The brother, J. C. Landreau, claims to have advanced large sums of money in the prosecution of these discoveries. Under the laws of Peru, Landreau claimed to be entitled to one-third part of the guano discovered, but before making known his discovery he entered into an agreement with the Peruvian Government by which he was to receive, in lieu of said one-third part, 10 per cent. of the net proceeds of guano discovered if the number of tons should be 1,000,000 or less; 8 per cent. on the tons exceeding 1,000,000 and not reaching 2,000,000; 6 per cent. on the tons exceeding 2,000,000 and not reaching 3,000,000; 4 per cent. on the excess of 3,000,000 and not reaching 4,000,000; 2 per cent. on excess of 4,000,000 and not reaching 5,000,000, and no recompense for any excess of 5,000,000 tons. The agreement further provided that neither Landreau nor his representatives should prosecute any rights under it except in the tribunals of Peru, and that he expressly renounced all diplomatic intervention, and that any violation of these conditions should work a forfeiture of all his rights under the contract. This agreement was entered into in October, 1865, but was repudiated by the Peruvian Government in the following December without apparent cause or any attempt to assign a cause. Landreau brought suit in the courts of Peru, but it was held that they were without jurisdiction to try the issue or grant relief. He then appealed to the Government of France to intervene in his behalf, but this met only with a tardy and indifferent response. J. C. Landreau then applied to the United States for its friendly intervention in his behalf as a naturalized American citizen. This brought the matter before the executive department of the government, then before Congress, and then again before the executive department.

Mr. Shipherd, agent of the Peruvian Company, claimed at different times, and in various forms of expression, a control over the Landreau as well as the Cochet claim, but other testimony contradicts this claim, and pretty clearly establishes a separate ownership and management,

THE CRÉDIT INDUSTRIEL.

The Crédit Industriel is a French company, organized in Paris in 1859. It is said to have organized with a capital of 60,000,000 francs, and that it now has a reserve surplus of 7,000,000 francs, and holds \$75,000,000 of the Peruvian loan of 1872. In January, 1880, this company, representing many of the holders of Peruvian bonds in France, Belgium, and Holland, and to some extent in Great Britain, entered into an agreement with Peru, by which the company undertook to pay the Peruvian loans of 1870 and 1872, with interest as it should accrue, the contract to cease when all these bonds were paid, the company to have a monopoly of the shipments of nitrates and guano from Peru, paying the latter \$10 royalty on each ton sold, and \$10 on each ton was to be reserved as in the nature of a sinking fund to be applied on the payment of bonds. Eighty per cent. of the balance was to go to the bondholders in direct payment of the debt, and the remaining 20 per cent. to go to the Crédit Industriel as compensation for shipments, sale of the guano, commission, insurance, &c. For the better carrying out of this agreement, the Crédit Industriel bound itself to organize an auxiliary company out of itself, which it did, and which company is known as the "COMPAGNIE FINANCIÈRE ET COMMERCIALE DU PACIFIQUE," with a capital of 13,000,000 francs, and is the company, together with the Crédit Industriel, with which Messrs. Morton, Bliss & Co., of New York, entered into an agreement for the shipment and sale of guano, in the month of August, 1881.

These three interests, the Cochet, and the Landreau claimants, and the Crédit Industriel, representing Peruvian bondholders, were exceedingly anxious that the United States should interfere in behalf of Peru, in order to preserve her autonomy and enable her to discharge her pecuniary obligations. Their objects related wholly to business or speculation. Neither patriotism nor international policy had anything to do with them. They looked upon the nitrate beds and guano deposits of Peru as the place whence were to come fortunes rivaling in magnificence and splendor anything Aladdin ever conjured, and intervention by the United States was the magic lamp by which these creations were to be evoked.

CONNECTION OF MINISTERS PLENIPOTENTIARY OF THE UNITED STATES WITH THESE PARTIES, AND THEIR BUSINESS TRANSACTIONS.

The committee now come to the consideration of the third and most important branch of this investigation, which relates to the personal interest or improper connection of ministers of the United States with these parties or their business transactions. As it has been impossible wholly to separate these ministers from the home State Department, whose representatives they were, and under whose instructions they were bound to act, it is proper to state that there has not been the slightest intimation or even hinted suspicion that any officer in the Department of State has at any time had any personal or pecuniary interest, real or contingent, attained or sought, in any of these transactions. The most extreme allegations went no further than to

complain of the policy of the Secretary of State as vascillating and inconsistent with itself, or with assurances made by him, in conversation with the representatives of these interested parties. It was no part of the duty of the committee to inquire into the policy or the conduct of any Secretary of State, or to form or to report any conclusion in regard thereto. At the same time the conduct of the ministers referred to was so interwoven with circumstances at the State Department that the one could not be investigated or explained without a statement of the other. The committee, in giving its conclusions as to the conduct of the ministers, will carefully avoid anything beyond a statement of the essential facts relative to others involved in the investigation. No charges against ministers plenipotentiary have been brought to the attention of the committee except against the Hon. Stephen A. Hurlbut, late United States Minister to Peru, and the Hon. Levi P. Morton, now United States Minister to France. The committee will consider, first, the charges made against Mr. Hurlbut.

HON. STEPHEN A. HURLBUT.

In this respect the task of the committee has been most delicate. Mr. Hurlbut was appointed minister to Peru by President Garfield in May, 1881. At the opening of this investigation charges were made against him, couched in the most violent and vindictive language. Afterwards, and during the investigation, as he was embarking for this country, Mr. Hurlbut died almost without warning, and thus the lips of the most important and interested witness were forever closed. The charges against Mr. Hurlbut were made by Jacob R. Shipherd, of New York, agent of the Peruvian Company. The gravamen of Mr. Shipherd's charge was that Mr. Hurlbut, as United States minister to Peru, was corruptly interested in favor of the *Crédit Industriel*. The charges are stated in detail in Mr. Shipherd's testimony of his conversation with Secretary Blaine at the Secretary's house, on the evening of October 13, 1881, as follows:

The WITNESS. The Secretary received me with apparently a mixture of cordiality and apprehension. I inferred from his manner that he had had some intimation of the intent of my visit.

Q. That was your visit at his house?—A. At his house, I should say, on the evening of October 13, probably. He opened the interview by asking somewhat abruptly what I had come after this time. I said, "I suppose, Mr. Secretary, I have come after General Hurlbut's official head. If we are rightly informed things are in a very bad way down there." The Secretary replied, with a manner that seemed to me decidedly angry, "Well, what is the matter now?" I went on then to recount to him the substance of the correspondence that had passed, and exhibited to him General Hurlbut's letter of September 12. He took it and read it, threw it down, and said, "What is the matter with that letter?" I said, "That letter, Mr. Secretary, disturbs us more by what it does not contain than by what it does contain. We find there an utter absence of any such disposition as we supposed existed in General Hurlbut's mind, in view of all that has passed between us and the State Department and himself heretofore—we find an absence of that disposition, which we supposed was there, to forward American interests. He talks about Peru—that Peru needs help; he talks about almost everything except American interests." I then recounted to the Secretary the substance of the collateral correspondence, which showed that there had been a deliberate withholding—

Mr. RICE. You may as well tell us what you recounted to him.

The WITNESS. I stated it yesterday. I refer to it now briefly.

Mr. RICE. You can state now fully just what you said to the Secretary.

The WITNESS. Well, I will follow the suggestions of the examiner. I was going to take the other course, because I didn't want the record made unnecessary long, and I stated fully yesterday what this collateral correspondence was.

Mr. RICE. I prefer to have the full conversation stated at this point.

The WITNESS. I told him that the intimation in Mr. Hurlbut's letter that the sealed

letter only had been delivered, and not the documents, had been confirmed by a letter received from Mr. Arizola by his correspondent.

Q. Were you aware of the contents of the sealed letter written to Mr. Arizola?—A. I was.

Q. Is that published in this book?—A. A translation of it is.

Q. In that letter a statement was made of what documents were sent in the package to the minister?—A. Yes; I think so. My recollection is not clear about that.

Q. So that the Peruvian correspondent was advised that in the same package in which his letter came, these documents also came?—A. Yes, sir. There was a constant reference to them.

Q. Did he call for those documents, and did Mr. Hurlbut refuse to deliver them?—A. Mr. Arizola was sick on his bed when the parcel reached Lima, and he spoke gratefully of the courtesy of the American minister in coming to his bedside and placing the sealed letter in his hands without waiting for any call. His letter either directly stated or clearly implied that he presumed that the minister had delivered to him all that he had received for him.

Q. But there was a statement in that letter of just what the minister had delivered to him?—A. Whether there was a categorical list of the documents, I cannot say.

Q. So that Mr. Arizola was advised that these documents were with Minister Hurlbut at the time?—A. Yes, sir,

Mr. RICE. Go on with your narrative

The WITNESS. The Secretary replied to these representations in a very vigorous manner, and in about this language: "Well, sir, what business had you to make an errand-boy of the American minister? What business had you to send any letters for him to deliver to anybody? If he had thrown all your stuff in the fire he would have served you right." My reply was that I had not presumed on any right in the premises, and had only depended upon the courtesy of the American minister; but that I was still unable to see what right the minister had, after receiving the letter and documents, to deliver a part and to detain the rest, especially when he knew that they pertained to international affairs and were intended for the President of the Republic of Peru. To that the Secretary made very little reply. He asked what further complaint there was. I said: "Mr. Secretary, reports have come to us, both through the South American papers and from gentlemen recently arrived from Lima, that General Hurlbut's conduct in Lima has created the general, indeed, the almost universal, impression there that he is in the pay of the *Crédit Industriel*." "Well," said he, "what are the facts? What do they allege?" "They allege, in the first place, Mr. Secretary, that Mr. Suarez, the recognized agent of the *Crédit Industriel* went out as a fellow passenger with General Hurlbut, and on the voyage was on terms of noticeable intimacy with him; that on their arrival at Panama, the American minister took on board of the American vessel that carried him a large part of the personal baggage of Mr. Suarez, and passed it through the custom-house at Lima as part of the personal baggage of the minister, contrary, as it was, to all proprieties. They further allege that this baggage of Suarez contained issues of money prepared in New York contrary to law" (and concerning which there was subsequently considerable correspondence). "Well," said he, "that is none of your business." "Very well, Mr. Secretary." "Well, what else have you got?" "It is alleged, further, Mr. Secretary, that on the arrival of Mr. Suarez and General Hurlbut at Lima, Suarez took Hurlbut immediately to one of the most elegant residences in Lima, furnished from top to bottom, with a wine cellar exceptionally well stored, and that he requested the American minister to accept the free use of it during his official residence, with the compliments of Suarez and the *Crédit Industriel*, and that Mr. Hurlbut accepted and now resides under these circumstances in that house." "Well," said he, "you will not catch Steve in any such way as that. He pays some rent for it, or something. He has got some deal. You cannot catch him in that way. He was not born yesterday. Have you got anything else?" "Further," I said, "Mr. Secretary, it is alleged, especially by gentlemen who have recently arrived in New York, whose names I will give you, and whom you can summon and examine for yourself, as a matter within their personal knowledge, that Suarez practically resides at the American legation; that he is continually there, as though he were a member of the family; that he is the escort of the ladies and children of the legation; that he goes arm in arm with the American minister everywhere, as no one else does, and that he maintains relations with the minister which are the talk of the town." He looked at me very sharply and said: "If that is the fact, Mr. Shipherd, Hurlbut has been purchased outright. I do not want any other proof and will not accept any explanation. If he has been conducting himself in this way publicly in his relations with Suarez, after all that has passed between Suarez and this department, there is no excuse for him. He has sold out, and I will go to the bottom of the affair immediately." "Thank you, Mr. Secretary. Shall I give you the names of the gentlemen?" "No; I don't care anything about that. I will go to the bottom of this thing."

The committee had to inquire if there was any truth in the allegations thus made, and if Mr. Hurlbut was under corrupt influence in his action regarding any one of the interests already explained. On May 28, directly after Mr. Hurlbut's confirmation, Mr. Shipherd claims that he (Shipherd) telegraphed him for a meeting in New York, and that in consequence an interview was had at the Fifth Avenue Hotel May 30, Mr. Hurlbut being *en route* for his home in Belvidere, Ill. According to Shipherd's statement, in this interview Mr. Hurlbut gave him the most encouraging statement of the President's approval of his claim and programme. Three days after this interview, June 2, Mr. Shipherd wrote to General Hurlbut the following remarkable letter:

LAW OFFICE OF JACOB R. SHIPHERD,
No. 10 Spruce Street, New York, June 2, 1881.

DEAR SIR: Of course we shall be glad to have yourself, so far as it may be entirely proper, and your personal friends interested with us, and I will reserve, say, \$250,000 of the pool stock subject to your advice.

Terms of payment can suit individual convenience.

Very respectfully,

JACOB R. SHIPHERD.

Hon. S. A. HURLBUT,
Belvidere.

The committee cannot accept any explanation of Mr. Shipherd that this letter was anything else than an attempt to influence the official action of Mr. Hurlbut by the offer of a personal share in the company whose interests he was asked officially to promote. Mr. Shipherd's letter to Mr. Walker Blaine, dated July 27, 1881 (page 799 of the testimony), was tentatively in the same direction so far as he dared to go in that quarter. The two letters indicate the character of the methods by which Mr. Shipherd sought to accomplish his purposes. Shipherd testified that he informed Mr. Blaine of this letter in his first interview in July, in the presence of his counsel, Senator Blair, and that he also informed several eminent and respectable gentlemen, said by him to be of his counsel, of the letter and the circumstances under which it was sent. No one of these gentlemen, according to the witness, suggested any impropriety in the letter. The surprise of the committee at the implied laxity of morals in so many distinguished gentlemen was dispelled by Secretary Blaine's testimony that he never heard of the letter until Mr. Hurlbut sent it to him from Peru in November, 1881; by the testimony of Senator Blair that he never heard of the letter until Secretary Blaine told him of it in December, 1881, and by the statements of nearly all the distinguished gentlemen referred to, to substantially the same effect. What could have been Mr. Shipherd's motive in making this statement, the falsity of which was so easily and completely proved, cannot be imagined, unless it was to impress upon the minds of the members of the committee the supreme integrity of a man who was incapable of seeing an attempt at bribery in such a letter. The committee questioned why Mr. Hurlbut should have retained the letter without communicating to his chief concerning it until November. This, however, was explained by his brother, Mr. William H. Hurlbut, who testified that the general showed him the letter with others before he sailed for Peru; that he stated that he was about to send them to Washington, but that he, the brother, dissuaded him from so doing until he should have reached the bottom of the thing. The committee agree with Mr. W. H. Hurlbut in the opinion which they understood him to express, that this was mistaken advice, and that duty to his chief demanded from General Hurlbut an instant exposure of this effrontery.

Mr. W. H. Hurlbut's testimony, however, relieves his brother of all suspicion of concealing and retaining the letter for the purpose of availing himself of its unworthy proposition.

The committee have dealt thus at length upon these circumstances, because the retention of the letter by Mr. Hurlbut, unexplained, might have caused suspicion of his integrity in the matter. Mr. Shipherd testified that he could get no aid from General Hurlbut, but that he favored the *Crédit Industriel*, and therefore must have been bribed by it. Somebody else was able to accomplish that in which he failed. Is there any ground for this insinuation? It must be remembered that at Shipherd's only interview with Mr. Hurlbut, he (Shipherd) was interested only in the Cochet claim. That Mr. Hurlbut then expressed any favorable opinion of that claim, either for himself or his superiors, rests only on the uncorroborated statement of Mr. Shipherd. He produced two letters from General Hurlbut, written from Belvidere, one dated June 6, and the other June 16, a few days after his alleged enthusiastic interview at the Fifth Avenue Hotel. (See page 71 of testimony.) If General Hurlbut talked on May 30 as Shipherd says he did, he was remarkably careful to avoid committing himself to the same effect on paper. He not only refrains from expressing any opinion of his own as to the Cochet claim, or from saying that the President had expressed any, but he tells Mr. Shipherd again and again that it is not he, but the President who must act, and that he "can take no cognizance of the case unless referred to him from the State Department." This would be remarkable language to use to the man whom less than a fortnight before he assured he had been bidden to tell that the President recognized "his case both in law and equity as strong as it could be well made," and that upon certain conditions, easily complied with, the hearty support of the United States could be relied upon! All the letters of General Hurlbut from Peru are in the same tone. Not one of them contains an expression of confidence in the claim. On the contrary, in a letter of October 1, he intimates the same estimate of its merits as he seems to have entertained throughout, nor is there a word in any dispatch from the State Department to intimate that any different opinion was entertained there. On August 4, a few days after his first interview with Mr. Shipherd, had at Senator Blair's request, Secretary Blaine did address a dispatch to Minister Hurlbut respecting the Cochet and Landreau claims, stating in regard to the former that no data concerning it had been laid before the department sufficiently definite to warrant any instructions; and giving directions as to the Landreau claim, as contained in such dispatch. After this, Mr. Hurlbut replied, September 14, "as to the Cochet claim, the legation has nothing but vague and sweeping statements better adapted to creating a commercial enterprise than to any judicial or *quasi* judicial action." On November 17 Secretary Blaine acknowledged the receipt of the above, stating that before its receipt he had come to the same conclusion. This recorded language contradicts any oral statements that Minister Hurlbut had formed and expressed opinions of the Cochet claim which should justify its most visionary advocate in expecting their official support.

The Landreau claim had been the subject of extended correspondence between the State Department and the United States legation in Peru for years. On July 20, 1874, Secretary Fish wrote to Mr. Thomas, then minister to Peru, authorizing him to make use of his "good offices" "unofficially" with the Peruvian authorities in favor of Landreau to secure, if possible, the adjustment and settlement of this claim. It had been examined by Mr. O'Connor, the law officer of the department, and

approved by him as a claim entitled to the consideration of the American Government, and was so referred to by Secretary Evarts in a communication to the President, dated January 23, 1879. In February, 1880, the House of Representatives unanimously adopted a joint resolution concluding with the request—

That the President be requested to take such steps as in his opinion may be proper to secure to said J. C. Landreau a formal settlement and adjustment of his claim against the Government of Peru.

The Senate reported adversely, placing its action on the ground that it was "a matter entirely within the power of the Executive Department." This claim, thus originating and thus indorsed, was known to the Department of State. Mr. Shipherd, in his interview with Secretary Blaine, refers to this claim, although he did not assert an interest in it. He testified on this point as follows :

The Landreau claim having been practically adjudicated by the American Congress, I certainly indorsed it, and said that it seemed to me it should be accepted as a valid claim and provided for; although I told the Secretary at the time that we had no interest in that claim, but that I was merely speaking for it at the request of the attorneys for the owners; because ours, as a larger and prior lien, would practically overslaugh the Landreau claim.

No one confirmed Mr. Shipherd in the statement that he had any right even to speak for the owners of the Landreau claim. Robert Christy, of Washington, then their recognized attorney, denies it. Mr. Blaine produced the following letter from Mr. Christy :

NO. 1420 NEW YORK AVENUE,
Washington, D. C., April 19, 1882.

HON. JAMES G. BLAINE :

DEAR SIR: In reply to your verbal inquiry touching my relation to the claim of John C. Landreau in respect to his claim against the Government of Peru, permit me to say that it appears from my book of accounts I was employed in his behalf as an attorney-at-law on the 27th day of April, 1878.

This employment has continued uninterruptedly ever since.

From the time of my employment to the present, I can say with the confidence based upon full knowledge of the subject, that the Peruvian Company, so called, has acquired no interest in nor right of control over this claim; that neither Jacob R. Shipherd nor any other officer of said Peruvian Company had any right whatever to represent this claim before the Government of the United States, nor before any officer or department thereof.

I have the honor to be, yours, &c.,

ROBERT CHRISTY.

But whether upon the suggestion of Mr. Shipherd or of somebody else, the Secretary of State, in his letter of August 4 above referred to, called attention to this claim in more favorable terms than those used regarding the Cochet claim. His letter was as follows :

No. 340.

Mr. Blaine to Mr. Hurlbut.

No. 7.]

DEPARTMENT OF STATE,
Washington, August 4, 1881.

SIR: As you are aware several communications have been recently addressed to this department in reference to certain alleged claims of citizens of the United States upon the Government of Peru, with most urgent request for the good offices of the United States Government in their behalf. While I cannot anticipate that in the present distressed and unsettled condition of that country our representations, however urgent, will receive prompt or satisfactory attention, I deem it best, in view of possible contingencies, to furnish you with general instructions. The two claims for which special consideration and active intervention have been asked are those known as the Cochet claim and the Landreau claim. In reference to the Cochet claim there has been no information laid before the department of a sufficiently definite character to warrant a specific instruction, and in the absence of the requisite data here you will be left to

take such steps as may seem expedient on investigating the origin and character of the claim. The primal point at issue is whether any American citizen or association of citizens has acquired an interest in the claim in a manner entitling him or them to the good offices of this government in making any representation to Peru. As the American holders of the claim or their attorneys will be on the ground, you will no doubt be placed in possession of all the facts, but you will take no step committing your government to the use of its good offices without first reporting in full to the department for well-considered and definite instruction. In regard to the Landreau claim, I see no reason to differ from the conclusion to which my predecessors seem to have arrived. John C. Landreau was an American citizen, apparently entitled under a lawful contract to reasonable compensation for important services to the Peruvian Government. In conformity with the established practice of our government, while you cannot in such case make an official demand for the settlement of this claim, you will employ your good offices to procure its prompt and just consideration. You will have observed that in the contract made by the Peruvian Government with Landreau and his brother it is expressly stipulated that any questions arising under its provisions should be submitted to the judicial tribunal of Peru, and that in no case shall diplomatic intervention be asked. You will also notice that the supreme court of Peru, sustaining a decision of the court below, has ruled that it had no jurisdiction of this contract, thus leaving Landreau in a position in which he can neither appeal to his own government nor obtain a judgment from the tribunals to which, by the contract, he was authorized to apply.

While this government will not, as at present informed, undertake to construe the contract or to decide upon the extent of the compensation due Landreau, you are instructed to call the attention of the Peruvian Government to this injustice, and say that the Government of the United States will expect some adequate and proper means to be provided by which Landreau can obtain a judicial decision upon his rights. If the constitution of the Peruvian courts or the interpretation of the law by Peruvian judges deprives Landreau of the justice which the contract itself guaranteed him, then, in the opinion of this government, Peru is bound in duty and in honor to do one of three things, viz: Supply an impartial tribunal, extend the jurisdiction of the present courts, or submit the case of Landreau to arbitration. I desire also to call your attention to the fact that in the anticipated treaty which is to adjust the relations of Chili and Peru, the latter may possibly be compelled to submit to the loss of territory. If the territory to be surrendered should include the guano deposits which were discovered by Landreau, and for the discovery of which Peru contracted to pay him a royalty upon the tonnage removed, then the Peruvian Government should in the treaty stipulate with Chili for the preservation and payment to Landreau of the amount due under his contract. If transfer be made to Chili it should be understood that this claim of an American citizen, if fairly adjudicated in his favor, shall be treated as a proper lien on the property to which it attaches, and that Chili accepts the cession with that condition annexed. As it may be presumed that you will be fully informed as to the progress of the negotiations between Chili and Peru for a treaty of peace, you will make such effort as you judiciously can to secure for Landreau a fair settlement of his claim. You will take special care to notify both the Chilean and Peruvian authorities of the character and status of the claim in order that no definitive treaty of peace shall be made in disregard of the rights which Landreau may be found to possess.

I am, &c.,

JAMES G. BLAINE.

Mr. Hurlbut replied, denouncing Shipherd, the Peruvian company, and the Cochet claim, but accepting and responding to the statements of his chief as to the Landreau claim, and promising compliance with his instructions.

The committee are unable to see how there could have been any corrupt or concealed meaning in this correspondence, or in the action it contemplated. No one, excepting Mr. Shipherd, seems to have suggested action as to the Landreau claim of a special character. He certainly was not so much in favor either with the department or with Mr. Hurlbut as to be able to influence either. He could secure no favorable attention to the Cochet claim from either. Favorable recommendations were made regarding the Landreau claim by Secretaries Fish and Evarts, and also by the House of Representatives. The emergency was more pressing, as a possibility, if not a probability, existed that Peru would be despoiled of the property affected by the Landreau claim, and prompt action was necessary to secure adjudication by Peru, and if any-

thing was found due a recognition by Chili of the lien upon the property sought by her. There was no adjudication of the validity of the claim, no settlement of the amount, only an instruction to seek an opportunity to adjudicate the rights of a person claiming to be an American citizen and to protect them so far as possible when adjudicated. There is no evidence that any person made any improper overtures to Mr. Hurlbut relating to the Landreau claim or that he did any improper act or declined to do any proper act regarding it.

The Credit Industriel (we use the name of the original company rather than of its branch expressly organized for South American business) was an organization of character and responsibility, representing vast and legitimate interests in Peru. It was willing to become still further involved to protect the investments already made. Its "programme" was to advance money to pay Peru's war debt and indemnity and to take liens upon the guano and nitrate deposits as security for past investments and present and prospective advances, guaranteed by a protectorate of the United States. It proposed, as has been shown, to receive a percentage upon sales as an equivalent for trouble and risk, but beyond this it did not seek to despoil Peru of her entire property. It did not claim to act from patriotic or humanitarian motives. It sought to aid Peru in its own interests, and to be liberally paid for what it did. Its representatives were not adventurers, but able men of affairs. In the administration of President Hayes these representatives approached the United States Government to enlist it in their interests. Their programme is summed up in a letter from Count Montferrand and Mr. Suarez to Secretary Evarts, dated January 20, 1881, as follows:

The Crédit Industriel, you will observe, agrees to pay Chili and Peru, respectively according to the proposition herein referred to, £550,000 per annum for a term of years to be agreed upon. This will justify a loan sufficient to cover the war indemnity demanded by Chili of £4,000,000 sterling, and leave to these respective countries sufficient to meet all legitimate national obligations. The Crédit Industriel agrees to obligate itself at the same time to arrange with the Peruvian bondholders the indebtedness held by them, amounting, principal and interest, to upwards of £45,000,000 sterling, without they being compelled to look to Peru; and, in return, the Crédit Industriel simply requires that Chili shall surrender the conquered territory of Peru to Peru, subject to a protectorate of the United States, guaranteeing to the Crédit Industriel the free and unobstructed shipment of the deposits of the said territory, to wit, the guano and nitrates, for the same term of years. The Crédit Industriel will further agree to pay annually to the American Cable Company, between Panama and Lima, an annual appropriation of £60,000 sterling.

The above is our object and our understanding of the financial interests of the said republics, and the execution of the proposed scheme, presented as it is by the Crédit Industriel, will afford a sure guarantee for the maintenance of the peace, as it will create between these republics a common interest, by placing their great source of common wealth under the management of an institution of high standing and repute throughout the world.

Mr. Evarts instructed Mr. Christiancy, then United States minister to Peru, February 17, 1881, upon this matter in the following letter:

No. 306.

Mr. Evarts to Mr. Christiancy.

No. 129. Confidential.]

DEPARTMENT OF STATE,
Washington, February 17, 1881.

SIR: The question of the restoration of peace in South America, ever present to this government, as you will have amply seen by my instruction No. 123 of the 10th instant, of which I send a duplicate to you by the hands of the same messenger who carries this present instruction, is presented to me to-day in a phase which I feel warranted in making known to you with whatever of confidence and reserve its nature may counsel.

Your latest dispatches, received here on the 15th instant, cover dates up to the 23d ultimo, and represent the success of the Chilian arms, as shown in the occupancy of the national metropolis by the invaders and the administration of its affairs by their officers, thus confirming the advices of the public press. And yet, at your time of writing, this condition of affairs left it problematical how far the prospect of a successful negotiation for ultimate peace might have been thereby hastened.

This department has been approached by Count Montferrand, of Paris, and Mr. Suarez, understood to be a Peruvian citizen, with certain proposals or calculations of important financial interests in Europe looking to financial aids and facilities to enable the two nations to liquidate advantageously to both, as it is argued, the obligations produced by the war and needing to be met as part of the terms of peace.

I have said to Mr. Suarez, who goes to Lima by the same steamer which carries this instruction, that I am always ready to press the mediation of this government towards early and honorable peace between the belligerents; that the financial facility and aid which the private interests he represents can furnish towards a liquidation of the pecuniary obligations that the war may have created and which may need to be met, are calculated to assist the restoration of peace; that, in this light, they will be laid before the representatives of the United States in Peru and Chili; and that any further responsibility of this government can only be determined by actual negotiations between the belligerents asking this government to assume them.

The "programme," as it is called by these gentlemen, it would seem, might form an element in the calculations of the belligerents as to the resources at their recourse in settling the terms of peace.

In this sense I have inclosed herewith two copies of the "programme" for your consideration, and for such comparison of views on it as Mr. Suarez (should he call on you) might invite and you might find it prudent to hold.

It is to be observed that any part or responsibility that this government might be asked by the belligerents, or by any financial administration that might be admitted by them into the adjustment considered or adopted to take, is reserved by this government to be treated with entire freedom whenever the matter should arise for consideration.

Count Montferrand and Mr. Suarez have both come to me under respectable introductions, and the financial bodies and persons whom they appear to represent are well known and of much weight in financial circles.

You will, however, understand that the matter is placed before you only as an element which, if it can be made valuable and conducive to peace, this government would not like to have wanting to the belligerents, if their negotiations would find it useful.

You can impart to your colleagues, Mr. Osborn and General Adams, as much of this communication as occasion may suggest, but always in confidence.

I am, &c.,

WM. M. EVARTS.

In January and February, 1881, they had interviews and correspondence with Secretary Evarts, regarding their programme. Their letters are in the published correspondence. (Page 696 to 700 inclusive.) They refer to what they term the "Monroe Doctrine," and the acquiescence of the European powers in the Doctrine, and the consequent responsibility of the United States to protect foreign interests in South America, to effect the restoration of peace between the belligerent powers. They urged the adoption by this government of the *Crédit Industriel* programme. It will be observed that Mr. Evarts, while calling Mr. Christiancy's attention to the proposition of the *Crédit Industriel*, and evidently regarding it with favor as a legitimate and powerful instrumentality by which Peru might obtain the pecuniary means by which to meet the demands to be made upon her in event of the restoration of peace, carefully avoids committing his government as to the extent or manner of the responsibility that it would assume, that being reserved "to be treated with entire freedom whenever the matter should arise for consideration." He does not conceal the earnest desire of his government for peace. He recognizes the *Crédit Industriel* as an important factor to be used in restoring peace. He proposes no forcible intervention or mediation by the United States, nor does he agree to any proposed scheme of guarantee or protectorate on the part of the United States. In June, 1881, Mr. Christiancy was displaced by General Hurl-

but. Secretary Blaine was evidently well informed in South American affairs. When giving General Hurlbut his letter of instructions under date of June 15, 1881, he writes as follows:

Mr. Blaine to Mr. Hurlbut.

DEPARTMENT OF STATE,
Washington, June 15, 1881.

SIR: The deplorable condition of Peru, the disorganization of its government, and the absence of precise and trustworthy information as to the state of affairs now existing in that unhappy country, render it impossible to give you instructions as full and definite as I would desire.

Judging from the most recent dispatches from our ministers, you will probably find on the part of the Chilean authorities in possession of Peru a willingness to facilitate the establishment of the provisional government which has been attempted by Señor Calderon. If so you will do all you properly can to encourage the Peruvians to accept any reasonable conditions and limitations with which this concession may be accompanied. It is vitally important to Peru that she be allowed to resume the functions of a native and orderly government, both for the purposes of internal administration and the negotiation of peace. To obtain this end it would be far better to accept conditions which may be hard and unwelcome than by demanding too much to force the continuance of the military control of Chili. It is hoped that you will be able, in your necessary association with the Chilean authorities, to impress upon them that the more liberal and considerate their policy, the surer it will be to obtain a lasting and satisfactory settlement. The Peruvians cannot but be aware of the sympathy and interest of the people and Government of the United States, and will, I feel confident, be prepared to give to your representations the consideration to which the friendly anxiety of this government entitles them.

The United States cannot refuse to recognize the rights which the Chilean Government has acquired by the successes of the war, and it may be that a cession of territory will be the necessary price to be paid for peace. It would seem to be injudicious for Peru to declare that under no circumstances could the loss of territory be accepted as the result of negotiation. The great objects of the provisional authorities of Peru would seem to be to secure the establishment of a constitutional government, and next to succeed in the opening of negotiations for peace without the declaration of preliminary conditions as an *ultimatum* on either side. It will be difficult, perhaps, to obtain this from Chili; but as the Chilean Government has distinctly repudiated the idea that this was a war of conquest, the Government of Peru may fairly claim the opportunity to make propositions of indemnity and guarantee before submitting to a cession of territory. As far as the influence of the United States will go in Chili, it will be exerted to induce the Chilean Government to consent that the question of the cession of territory should be the subject of negotiation and not the condition precedent upon which alone negotiation shall commence. If you can aid the Government of Peru in securing such a result, you will have rendered the service which seems most pressing. Whether it is in the power of the Peruvian Government to make any arrangements at home or abroad, singly or with the assistance of friendly powers, which will furnish the necessary indemnity or supply the required guarantee, you will be better able to advise me after you have reached your post.

As you are aware more than one proposition has been submitted to the consideration of this government looking to a friendly intervention by which Peru might be enabled to meet the conditions which would probably be imposed. Circumstances do not seem at present opportune for such action; but if, upon full knowledge of the condition of Peru, you can inform this government that Peru can devise and carry into practical effect a plan by which all the reasonable conditions of Chili can be met without sacrificing the integrity of Peruvian territory, the Government of the United States would be willing to offer its good offices towards the execution of such a project.

As a strictly confidential communication, I inclose you a copy of instructions sent this day to the United States minister at Santiago. You will thus be advised of the position which this government assumes toward all the parties to this deplorable conflict. It is the desire of the United States to act in a spirit of the sincerest friendship to the three republics, and to use its influence solely in the interest of an honorable and lasting peace.

I am, &c ,

JAMES G. BLAINE.

We have here an expression of belief, the ground of which may be found in the letters of the United States minister to Chili, that Chili was willing to facilitate the establishment of the Calderon government

for the purposes of internal administration and the negotiations for peace:

A statement of the sympathy and interest of the people and Government of the United States with the Peruvians, a declaration that the United States cannot refuse to recognize the rights which the Chilean Government has acquired by the successes of the war, and that it may be that a cession of territory will be the necessary price to be paid for peace.

The minister was advised of the importance to Peru

to succeed in the opening of negotiations for peace without the declaration of preliminary conditions as an ultimatum on either side.

Referring to the fact that more than one proposition has been submitted to enable Peru to meet the conditions which would probably be imposed upon her without the sacrifice of territory, the minister is advised that if Peru can devise and carry into effect such a plan, the Government of the United States would be willing to offer its good offices toward the execution of such a project.

From the testimony of Mr. Trescot it is quite evident that the propositions referred to in the letter of instruction were those submitted by the *Crédit Industriel*. These were fully before the department, while as yet Mr. Shipherd had not been heard of either by Secretary Blaine or Mr. Trescot, but there is neither here nor anywhere else in the record any evidence of an approval by this administration of the project of the *Crédit Industriel* in all its details, any more than there had been by its predecessor, if as much.

Secretary Blaine's instructions to Mr. Hurlbut were as guarded, surely, as those of Secretary Evarts to Mr. Christiancy, originating no plan, indorsing no plan. Our government would be glad to hear from Peru that she had been able to devise one by which she could meet the exigencies of her position, and would extend its "good offices" to aid in carrying it out. Nowhere in the record is there any indorsement expressed or implied of the scheme of a "protectorate" by the United States; and, as Mr. Elmore in his letter put into the testimony by Mr. Randall, writes, "The subject of a protectorate was never once discussed, and the word protectorate never once mentioned in any interview between Secretary Blaine and myself, or in any interview with Mr. Blaine at which I was present, either with or without you." It is quite evident that the Secretary was as guarded in his conversations as in his written communications, and never gave to the able gentlemen who represented the *Crédit Industriel* any more explicit encouragement than his predecessor. He received them kindly, listened to their schemes with interest, gave to their "programme" the consideration it deserved, would have been pleased if Peru could work out of it a plan for her relief, and if she could, and ask for them, would extend the "good offices" of the United States to aid in carrying it out; reserving, as did Mr. Evarts, the consideration of details to the time when the occasion should require. Mr. Blaine alleges that the *Crédit Industriel* plans were always urged by its representatives coupled with the idea of an American protectorate. Mr. Randall and Mr. Elmore insist that the interests and plans of that company were urged without reference to an American protectorate as a part thereof. Upon this issue the committee express no opinion.

Possessed of these instructions, knowing no more of the Cochet claim or of the Landreau claim than had emanated from the brain of Mr. Shipherd, Mr. Hurlbut went to Peru. As has already been shown, there is no evidence that he did anything regarding either of these claims beyond instructions which from time to time he received, and

nothing in the remotest degree casting suspicion upon his absolute integrity. There can be no question that he informed himself carefully, intelligently, and honestly, while in Peru, of the history of these claims, as was his duty, nor can there be any question that he kept himself advised as to the *Crédit Industriel*, of its plans, resources, and negotiations, as surely he would have done amiss in failing to do.

Upon the 6th day of April last, an extraordinary and malignant attack was made upon the memory of Mr. Hurlbut by the witness, Shipherd, supplementing that made in the previous October by the same person in his interview with Secretary Blaine. Having failed in his own attempt to bribe him, or to get anything out of him in support of his own visionary scheme, he seems at once to have jumped at the conclusion that the minister had been bribed by somebody else. If Shipherd had any ground for this accusation beyond the jealousy and suspicion engendered by his own nature, and ideas of the methods and motives of men, they were but the vaguest hearsay scandal which he has been unable even approximately to substantiate, and which, upon the testimony of Mr. Blaine, Mr. Trescot, Mr. Randall, and Mr. W. H. Hurlburt, and all the probabilities of the case, the committee dismiss as unworthy of any serious or further consideration. Secretary Blaine was startled by the positive declarations of Mr. Shipherd, apparently indorsed by many prominent and respectable men, and at the time accompanied by a United States Senator, as his counsel, into sending a warning telegram to Mr. Hurlbut, somewhat peremptory in tone, as follows:

HURLBUT, *Lima*:

Influence of your position must not be used in aid of *Crédit Industriel* or any other financial or speculating association.

To this Mr. Hurlbut replied as follows:

No. 369.

Mr. Hurlbut to Mr. Blaine.

[Extract.]

No. 25.]

LEGATION OF THE UNITED STATES,
Lima, Peru, November 2, 1881. (Received November 25.)

SIR: I was surprised by receiving, on the 31st ultimo, a telegram from you dated 29th, which, when deciphered, reads as follows:

"Influence of your position must not be used in aid of *Crédit Industriel* or any other financial or speculating association."

To this I immediately answered. "It has not been; it will not be."

I do not know the reasons why such a warning should be sent me. I have, of course, known that the "*Crédit Industriel*" had made arrangements with the Peruvian Government to furnish them the funds wherewith to pay the money indemnity which might be demanded. But the whole matter of that contract, of which I never knew the particulars, was concluded long before I arrived in Lima; in fact, as I am informed, before I was appointed to this place. To set the matter absolutely at rest, I inclose herewith a correspondence had this day with President Calderon, by which it appears that the last action taken was in the month of March last.

I have looked upon the matter of these money arrangements between this corporation and the Peruvian Government as a matter exclusively Peruvian, and not in the most remote degree connected with this legation.

Mr. Jacob R. Shipherd, who claims to represent the Cochet claim, has written very peculiar letters to Mr. * * * in reference to that claim, and in his last letter complains somewhat indecently of the little interest I appear to take in the supposed claim or syndicate over which he claimed to preside.

From what Mr. * * * tells me of the contents of his last letter, it is possible that he or his allies have something to do with this charge as to the *Crédit Industriel*.

I wrote to the Department, in my No. 12, my opinions upon the Cochet claim, on which Mr. Shipherd and his associates rely. I have also written in reply to Mr. Ship-

herd's letters, giving him my views of his case so far as I know its merits. I have pointed out to him the utter defect of proof as to three positions, each vital.

The whole colossal speculation rests upon assumptions, not evidence. Thus, first, it is not true in fact that Cochet discovered either guano or its uses as a fertilizer. As such it has been known and used for hundreds of years, far back into the time of the Incas.

Second. It is not true that Peru ever recognized him in any such capacity.

Third. It is not true in fact that his rights, whatever they were, descended to his illegitimate son, under whom these parties claim, or at any event that any record of legitimation has thus far been produced.

I presented these defects to Mr. Shipherd, who does not like my criticism, and writes to Mr. * * * that he can get on quite well without me, as he has the whole government and all their friends on his side and pledged to his scheme.

The committee detect in this correspondence nothing difficult to comprehend, or inconsistent with previous actions or declarations, and they fully absolve Mr. Hurlbut from the malicious and unfounded charges.

It was alleged by the Chilians that Minister Hurlbut, relying upon the aid of the *Crédit Industriel*, declared that his government would prevent the dismemberment of Peruvian territory, and encouraged the Calderon government to decline negotiations for peace unless the possibility of a cession of territory was expressly waived by Chili. If he did so declare, and so use his official influence, it was contrary to the instructions given him at the time of his departure to his post, and which continued unreversed to the day of his death.

His solemn declarations are of record that he did not so declare, and there is no evidence before the committee, other than hearsay, going to show that he did.

Chili, however, under a belief, real or feigned, claiming that he had done so, became incensed against the United States, deposed and imprisoned Calderon, and planted herself more firmly than before upon the demand for an absolute cession of that territory, which constituted Peru's chief wealth and means, and afforded her only hope for an honorable peace.

Minister Kilpatrick at Chili and Minister Hurlbut at Peru were each doubtless affected by partiality for the nation to which he was accredited, and the dispatches of each to the home office were more or less colored by this fact. But beyond this, which, if a fault, proceeded from their generous natures, so far as the scope of this investigation extends, no stain can rest upon the memory of either of these brave and accomplished men.

It was charged that the

HON. LEVI P. MORTON,

minister plenipotentiary of the United States to France, as a member of the firm of Morton, Bliss & Co., after his appointment as minister to France became interested in a contract with the *Crédit Industriel* for the sale of Peruvian products in the United States. Upon this point Mr. George Bliss, the business partner of the firm, and Mr. Robert E. Randall, counsel for the *Crédit Industriel*, gave explanations and uncontradicted testimony. From this testimony it appears that a contract was entered into between Morton, Bliss & Co., and Messrs. Gautreau & Co., of Paris, representatives of the *Crédit Industriel*, dated in August, 1881, with a memorandum annexed to the original contract, which contract and memorandum are as follows:

Memorandum of an agreement entered into this — day of August, A. D. one thousand eight hundred and eighty-one, between Morton, Bliss & Co., of New York, United States of America, and Messrs. Pedro, Louis, & Henri Gautreau, of Paris, France.

Whereas, the said Messrs. Gautreau did, on the 20th day of January, 1880, enter into an agreement or contract with the "*Société Générale de Crédit Industriel &*

Commercial," by which they were appointed the general agents of said Société Générale de Crédit Industriel & Commercial, or its assigns, for the sale of the guano and nitrates, which rights, concessions, and authority had been granted and ceded to and conferred upon the Société Générale de Crédit Industriel & Commercial by the Peruvian Government, under agreements or contracts entered into on the 7th day of January, 1880, and the first and eighth days of February, 1881, and which said rights, concessions, and authority were subsequently assigned, transferred, and set over to the "Compagnie Financière & Commerciale de Pacifique," on the 11th day of February, 1881, by the said Société Générale de Crédit Industriel & Commercial.

Now, therefore, it is agreed by the said Messrs. Morton, Bliss & Co., and Messrs. Gautreau,

First. That the said Messrs. Gautreau, under the powers and authority granted to and vested in them by the agreements and contracts hereinbefore mentioned, by these presents do appoint and constitute Messrs. Morton, Bliss & Co. the sole agents in the United States of America, for the sale of guano and nitrates, which constitute the objects of the contracts aforesaid of the "Société Générale de Crédit Industriel & Commerciale" and the Compagnie Financière & Commerciale de Pacifique." And, in consideration of the services to be rendered by said agents as aforesaid, Messrs. Gautreau, for themselves, and as the representatives of the Société Générale de Crédit Industriel and Commerciale" and the Compagnie Financière & Commerciale du Pacifique," agree to allow pay, or caused to be paid, to Messrs. Morton, Bliss & Co. a commission of 5 per cent. on the gross sales of the guano and nitrates, the same to be chargeable against each allowed sale.

Second. In case, for any cause whatsoever, the contracts aforesaid between Messrs. Gautreau and the "Société Générale de Crédit Financier & Commercial" shall cease to exist, then, and in such case, this agreement of contract will become void.

Third. The guano and nitrates will be shipped direct to Messrs. Morton, Bliss & Co. by Messrs. Gautreau at such times and to such ports of delivery as Messrs. Morton, Bliss & Co. shall require and direct, and in such quantities as the markets shall demand, the same to be a matter of mutual understanding between the same. But said Messrs. Morton, Bliss & Co. shall always be able to require Messrs. Gautreau to deliver an equal quantity to the amount sold the preceding year; provided that there shall not be in store the said quantity unsold. And the directions for the delivery shall be made so that the shipments shall not arrive in the United States over six months in advance of the period of sale, Messrs. Gautreau, however, not being responsible to Messrs. Morton, Bliss & Co. in case of non-delivery, unless the same shall be due to laches on the part of Messrs. Gautreau. The guano and nitrates will be delivered to Messrs. Morton, Bliss & Co. alongside of the vessels at the designated port of delivery, free from all charge and expense, including cost of bags, the same in every instance being defrayed by Messrs. Gautreau, and all subsequent charges, and expenses of handling and warehousing, if Messrs. Gautreau shall so require, shall be advanced by Messrs. Morton, Bliss & Co., who shall reimburse themselves such advances with interest at the rate of 5 per cent. per annum out of the proceeds of the sales, when made, of each distinct account sale.

Fourth. Messrs. Morton, Bliss & Co. will act under the directions and instructions of Messrs. Gautreau, who shall specially have the authority to fix and name the prices, wholesale and retail, at which Messrs. Morton, Bliss & Co. shall have power or authority to sell the guano and nitrates. It is understood, however, in case no instructions are given and received, then Messrs. Morton, Bliss & Co. are authorized to act on their own judgment for the best interests of all concerned. All sales are to be for cash, at least so far as Messrs. Gautreau are interested; but if Messrs. Morton, Bliss & Co., for any cause whatsoever, should prefer to sell on time credit, they are at liberty to do so; such sales, however, will be at the sole risk of Messrs. Morton, Bliss & Co., and the consideration previously agreed and fixed shall, in every instance, be credited to and accounted for to Messrs. Gautreau, but not to be payable until the time shall have matured for the payment of such time sales; provided, however, that no sales on time shall be at a longer credit than ninety days.

Fifth. Messrs. Morton, Bliss & Co. will make out and forward to Messrs. Gautreau, every three months, a quarterly statement and account of all transactions. They shall remit, upon sales being effected, all moneys collected, payable to Messrs. Gautreau, by virtue of this contract, by first-class bills or drafts on Paris and London. The discounts, charges, or benefits that may accrue in the negotiations of these bills or drafts shall be for the account of Messrs. Gautreau. Messrs. Morton, Bliss & Co. will further furnish to Messrs. Gautreau, every fortnight, the necessary data to enable them to make a fortnight statement of the guano and nitrate received, sold, or in store during such period, together with the name of the purchaser or purchasers, and of the amount purchased, as they are bound to make to the Société Générale de Crédit Industriel & Commercial, or its assigns, by their contract of the 20th day of January, 1880.

Sixth. Messrs. Morton, Bliss & Co. agree to use their best efforts to prevent the guano and nitrates being manipulated, and that during the existence of this contract

and agreement they will not become interested in any article or articles that may in any manner compete with the guano or nitrates that shall be consigned to them.

Seventh. Messrs. Morton, Bliss & Co. will account to Messrs. Gautreau for one-half of all moneys that may be realized or received under charter parties on outward cargoes from the vessels which have brought the guano and nitrates to the United States.

Eighth. Messrs. Morton, Bliss & Co. will collect, free of charge, for account of whom it may concern, all other commissions or sums of money stipulated in the charter parties or otherwise due by the vessels.

Ninth. It is further understood and agreed that if it should be deemed advantageous by the Compagnie Financière and Commerciale du Pacifique to mix and manipulate, or in any manner prepare the guano and nitrates for sale, then Messrs. Morton, Bliss & Co. shall be the only parties who may be authorized to so mix and manipulate or prepare the guano and nitrates for sale.

Done in duplicate, in Paris, on the twenty-seventh day of August, one thousand eight hundred and eighty-one, and in New York, on the —.

The following is the memorandum:

Memorandum to the contract for the sale of the guano and nitrates, entered into on the — day of August, A. D. one thousand eight hundred and eighty-one, between Messrs. T. L. and H. Gautreau, of Paris, and Messrs. Morton, Bliss & Co., of New York.

It is further declared and stipulated that the said contract shall continue in full force and effect for the period of the existence of the contracts entered into on the seventh of January, 1880, and the first and eighth of February, 1881, between the Peruvian Government and the Société Générale de Crédit Industriel and Commercial, but in case that the said contracts should fail to become operative and effective in consequence of the failure of the United States to mediate between Chili, Peru, and Bolivia, and thus to secure peace and the recognition of the concessions, rights, and privileges granted to and secured by the contract above mentioned, then the said contract between Messrs. Gautreau and Messrs. Morton, Bliss & Co. shall cease and terminate at the expiration of six years from the date of said contract.

It is understood that in case the contracts aforesaid of the 7th of January, 1880, and the 1st and 8th of February, 1881, shall be modified or altered with the consent of the Compagnie Financière et Commerciale du Pacifique, now substituted in the place and state of the Société Générale du Crédit Industriel et Commercial, such modifications and alterations shall in no manner affect or invalidate the contract between the parties, dated the —.

It is furthermore expressly and formally declared that the present agreements signed and executed simultaneously with the aforesaid contract dated this day, for the consignment and sale in the United States of the guano and nitrates, shall be held to form an integral part of said contract, and that all stipulations contained in both contracts or agreements shall be considered in their totality as belonging to one single contract.

Done in duplicate, in Paris, on the twenty-seventh day of August, one thousand eight hundred and eighty-one, and in New York on the —.

So far as the house of Morton, Bliss & Co. was concerned, it was represented in the making of this contract by Mr. Bliss. Mr. Morton had a general knowledge of the subject-matter of the contract, but took no active part in its arrangement or consideration. When Mr. Randall, the active agent of the Crédit Industriel, called upon Mr. Morton, in Paris, and referred to the negotiations preceding the contract, in Mr. Randall's language—

Mr. Morton very politely, but very positively, said, "Mr. Randall, that is a matter which you have conducted through Mr. Bliss so far as my firm is concerned, and I prefer, for many reasons, that it should so continue. I do not know anything, and, in fact, I do not want to know anything of the matter whatever."

In saying this, Mr. Morton indicated the position, in which this committee earnestly concurs, that a minister of the United States should have nothing to do with contracts of an international character and with which his official position may be affected or have an influence in any way whatsoever. In all our diplomatic relations with other nations we should have most scrupulous regard for honorable dealing, and should guard with jealous care against anything which can give even suspicion of a selfish or improper motive. The contract of Morton, Bliss & Co. was with a company which was well known in the State Department as an important factor in matters of great international con-

sequence, affecting the policy of the government in a most important direction. The company was chartered by the government to which Mr. Morton was accredited, and there were many ways in which he might be called upon to act officially regarding the subject-matter of the contract. He was at one time desired to exercise his "good offices" in France in favor of the Calderon government, the recognition and upholding of which was regarded as of much importance to the interests of the company with which his firm had made this contract.

The committee are clearly of the opinion that Mr. Morton has done nothing and at no time had he the remotest intention of doing anything which could compromise the honorable discharge of his official duties, yet they cannot but believe that the scrupulousness manifested in his interview with Mr. Randall would have been sustained beyond possible contingency by his prohibition to his firm to have anything to do with this contract upon his first knowledge of the negotiations in regard thereto. Under the circumstances the committee do not feel called upon to say more upon this point than to express the opinion that all ministers of the United States should carefully avoid all complications which can by any possibility justify a suspicion of personal interest or bias in their official relations.

REFUSAL OF SHIPHERD TO ANSWER QUESTIONS PROPOUNDED TO HIM.

The committee, under some circumstances, might have been seriously embarrassed by the refusal of the witness (Shipherd) to answer certain questions propounded to him, and to produce certain letters covered by the supplemental resolution of the House, hereinbefore referred to.

The committee, however, reached the conclusion that the character of the testimony of this witness was such, and the information to be derived from it of so little importance, as not to justify making an issue with him upon so doubtful a question of jurisdiction. It therefore dismissed the witness after his refusal to answer certain questions and to produce certain papers, without attempting further compulsion or reporting his conduct to the House, excepting as it now does, and without recommending further action in the premises.

Nor do the committee feel called upon to make any report regarding the position of the

HON. H. W. BLAIR,

who, as appears from his testimony, while Senator of the United States, accepted the position of counsel to the Peruvian company, and thus lent his great influence to the visionary plans and schemes of Mr. Shipherd, whom he introduced to the Department of State as his client.

Senator Blair explains and defends his connection with these transactions, but the committee consider that, within the scope of their authority, they have nothing to do with Senator Blair except as a witness, the consideration and effect of whose testimony causes them in no way to modify the opinion already expressed, that public officials cannot guard too scrupulously against engaging in enterprises where their private interests are or may be brought in direct conflict with their public duties.

The committee herewith report the testimony taken to the House and their conclusions as follows:

1st. That the missing papers have been replaced by correct copies of the same, with the exception mentioned.

2d. That no minister plenipotentiary of the United States was either

personally interested or improperly connected with business transactions in which the intervention of this government was requested or expected in the affairs of Chili and Peru in such manner as to call for action on the part of the House of Representatives.

They therefore report the following resolution and ask its adoption:

Resolved, That the Committee on Foreign Affairs, to whom was referred certain House resolutions, adopted on the 24th day of February and the 16th day of March, 1882, relating to certain missing papers and the connection of one or more ministers plenipotentiary of the United States with business transactions relating to the affairs of Chili and Peru in which the intervention of this government was requested, be and the same hereby is, discharged from the further consideration thereof.

The undersigned concurs in the general conclusions of the foregoing report of the committee, excepting so far as they are qualified by his statements in a speech delivered by him in the House, July 5, 1882. He also submits the following statement in regard to the Landreau claim:

The claim is for services alleged to have been rendered by Theophile Landreau, a Frenchman, and amounts to a sum variously stated from seven millions three hundred thousand to one hundred and twenty-five millions of dollars. Precisely what those services were, or what amount of time, trouble, and money were expended in giving them, is not shown. The claimant and his friends confine themselves to vague and general allegations that they were very costly to him and important to the Government of Peru. They consisted in searching for deposits of guano. He did not begin this search nor prosecute it at the special request of the Peruvian Government, nor in pursuance of any contract or employment. He alleges that he undertook it because he was attracted by certain decrees and proclamations offering a reward of thirty-three per cent. for discovering property previously unknown and belonging to the government. He professed to believe and to have the private opinion of some distinguished Peruvian, whom he did not name, that he could, under these decrees and proclamations, entitle himself to the reward of thirty-three per cent. if he ascertained that any particular part of the public land contained guano. This was not a true construction of the decree, and he was probably conscious of it. He conducted his searches clandestinely, and whatever discoveries he made he kept to himself. Having made a "list" of the lands on which he said that he had found guano, and sealed it up, he offered to sell his secret to the government. It was bought, or at least a bargain was made for it, upon terms which would give the claimant an enormous fortune if his list was a true one. He alleged that the property on which he had found guano was worth four hundred millions. The government refused to pay on the basis of this list until it was verified by an examination of the lands, and declared that Landreau's demand was so large that it could never be paid; but they were willing to pay him what he might reasonably deserve to have. They insisted, however, that they must be allowed time to examine the whole subject, with a view to the making of a new contract. This proposition was resented as a denial of justice. Much dispute followed, and a solemn declaration was made by the executive branch of the government that the contract was void. It does not appear that there was any absolute refusal to pay for the services which Landreau rendered, but the parties did not agree on the terms of a new bargain.

This action of Peru gave rise to much harsh denunciation. Landreau and his supporters in that country and elsewhere loudly asserted that the government had contracted the guilt and infamy of a repudiating state. To the undersigned it does not appear so. What they refused to pay was not an ascertained and honest debt.

The fact that Landreau thrust his services upon the Peruvian Government; that he gave the public authorities no notice of his intentions; that he made no report to them of his progress; that when the bargain was made the government was utterly ignorant of the subject-matter it embraced; that the officers consenting to it had no means of knowing what Landreau would claim under it except by reference to papers which were then close under seal and which Landreau would not permit them to open—these facts show it to have been at best a catching bargain, not sanctioned by any principle of public law or commercial morality. But, apart from all this, the enormous disparity between the services rendered and the compensation claimed for them under the contract is *per se* evidence of fraud so strong that no chancellor in the world would enforce it in a suit between private parties. The proper authorities were, therefore, perfectly justified in pronouncing the contract void.

This decision upon the contract was made by the executive branch of the Peruvian Government; the legislature, being appealed to, refused to say it was wrong; and when the judicial courts were called upon by the claimant to enforce the contract they decided that they had no jurisdiction of such a cause. Undoubtedly the courts were right. No law of Peru gave the judiciary power to cite the Executive before it and rejudge its decision in such a case. In that country, as in this and every other, the decision of the Executive is final in matters of contract between the sovereign and an individual, except where some special provision submits it to the cognizance of a judicial tribunal.

The claimant got a decision from the Executive. It was a right and true determination of the cause, and he falsely complained that justice was denied him. Justice was not denied him; it was given him by the only organ of the government which had jurisdiction of the parties or the subject-matter in controversy.

After the decision of the Executive against him and the refusal of the legislature to interfere, and his failure in the courts, he applied to his own government—that of France—to aid him in getting his claim acknowledged and paid. But here he was met by his own express agreement that he should forfeit his claim if he proceeded or attempted to procure the diplomatic intervention of any foreign government in its favor. It will not be denied that this was a perfectly lawful provision, which could not be violated without incurring the stipulated penalty. It was a dependent covenant, and therefore an essential part of the contract. It was wise, necessary, and just to insert it. Peru was willing to make contracts with foreigners who would consent to put themselves on a level with her own citizens, but she would not embroil herself with foreign governments about the execution of contracts which concerned her own domestic affairs exclusively. The conclusion from this is that Landreau forfeited and completely lost whatever rights he might previously have had under the contract when he violated it by seeking the aid of France. But the Government of France refused to interfere, either because its authorities saw that intervention would be *ipso facto* the legal destruction of the claim, or else because it was, in their opinion, originally dishonest and unjust. Yet Landreau pressed it upon them so persistently that it became necessary for the foreign

office to instruct its diplomatic agents in Peru to have no communication with him.

Being thus silenced by the adverse judgment of both Peru and France, the device was adopted of getting American influence to carry it. It might be supposed that the United States would be very slow to give its protection to a French claim of such character and with such a history. The pretenses upon which this was effected were very shallow.

It seems that John C. Landreau, a younger brother of J. Theophile Landreau, had come to America when about eighteen years of age, and was living in Louisiana. Our authorities believed him to have become an American citizen, but that fact is doubtful; for though he had a certificate of naturalization and was appointed to a consulate in the West Indies, which a foreigner could not hold, the records of the court in which he was said to have been naturalized contain no trace of such an act. However that may be, John C. Landreau was alleged, both by himself and his brother, to have an interest in the claim which made it the duty of the American Government to prosecute it.

What connection had John C. Landreau with the claim of Theophile? None whatever which could justify or even excuse us for intervening. Certain letters between the brothers are produced which, if authentic and written at the time of their date, show that Theophile told John, while he was prosecuting his searches for guano, what he was engaged in and how largely he hoped to profit by it. "For my part," he adds, "I take you for my partner and wait with anxiety for the five thousand dollars you promised to send me." Subsequently he acknowledges the receipt of six thousand two hundred and fifty dollars previously promised. On what account this remittance was made is not shown, but it was manifestly not a contribution of John to the capital of any partnership in Theophile's Peruvian adventure. There was never any agreement between them which bound John to share losses, or which entitled him to profits. Theophile prosecuted the business alone; there was no privity of contract between John and Peru; John was wholly unknown to that government, and his name was never mentioned in any of its dealings with Theophile.

If we assume that John was an American citizen and that he had a secret interest in Theophile's contract by virtue of some unknown arrangement between themselves, is it not still preposterous to say that these facts would metamorphose the Frenchman's case into an American claim? At the beginning it was a French claim, if anything. France pronounced it unworthy of support. Did the claimant change his civic relations or the nationality of his demand by simply revealing the fact that a naturalized citizen of the United States had a secret interest in the success of the speculation?

But notwithstanding the obvious impropriety of our intermeddling with this bad claim of a French adventurer, its supporters were ingenious enough to convince the State Department that we ought to do so. Mr. Fish, who at first would have nothing to do with it, was induced to say at a later period that it appeared to deserve examination; the officer whose duty it was to report upon its merits expressed an opinion strongly in its favor; a committee of this House went the length of instructing the President to prosecute it, by a joint resolution, which, however, failed to pass the Senate. Mr. Blaine, regarding the judgment of his predecessors as conclusively binding on him, and believing he could not go behind what he called the adjudication of this House, went in fact a long step beyond that.

In all the discussions of the subject, American officers conducting

them have ignored the fraudulent character of the original contract; the manifest justice of the decision made against it by the executive branch of the Peruvian Government; the finality of that decision under the laws of Peru; the absolute renunciation expressed in the contract itself of all right to call in the aid of any foreign government; the refusal of the claimant's own government to support him in his demands; the absurdity of calling this an American claim merely because an American citizen was supposed to have a secret interest, not in the claim itself, but in the successful prosecution of it by a foreigner, and the total absence of all proof to show the existence even of that indirect interest. Overlooking these facts, and listening only to accusations against Peru, as false as they were vague, the authorities of this government became worked up to the point of asserting in solemn diplomatic form that Peru was bound in duty and honor either "to supply an impartial tribunal, extend the jurisdiction of the present courts, or else submit the case of Landreau to arbitration." Peru was addressed in this decisive style upon the subject of Theophile Landreau's false claim, after it was adjudicated against him by the only Peruvian tribunal which had any right to decide it, and after the Government of France had resolutely and most emphatically refused to give it the slightest countenance. In the same dispatch the Secretary of State instructs the minister at Lima not only to call the attention of the Peruvian Government to "this injustice," but directs the minister to say "that the United States will *expect* some adequate and proper means to be provided by which Landreau can obtain a judicial decision upon his rights." The minister is further instructed as follows: "As it may be presumed that you will be fully informed as to the progress of negotiations between Chili and Peru for a treaty of peace, you will make such efforts as you judiciously can to secure for Landreau a fair settlement of his claim."

But this is not all. Anticipating that in a treaty of peace between Chili and Peru the latter might be compelled to surrender a portion of her territory, including possibly the guano deposits of which Landreau claimed to be the discoverer, he declared that the treaty should stipulate "for the preservation and payment to Landreau of the amount due under the contract."

The Secretary, speaking for and in the name of the President, goes further. He declares that if a transfer of territory be made to Chili it shall be understood that Landreau's claim must be treated as a *prior lien*, and that Chili accepts the cession with that *condition* annexed. We do not suppose that the word *lien* is used here in its proper legal sense. The author of the dispatch meant to say that Chili must be made to take an estate in the territory subject to a paramount title in Landreau for such part as his claim covered; that the treaty must recognize Landreau's rights as being superior to those of the high contracting parties and *prior* to all others; and that Chili must not satisfy her own claim for expenses of the war without first indemnifying Landreau for the failure of his speculation upon Peru.

This was certainly taking very high ground, and the Secretary of State expresses the determination of this government to hold it firmly; for he instructs the minister in conclusion: "You will *take especial care to notify* both the Chilean and Peruvian authorities of the character and status of the claim, in order that *no definitive treaty of peace* shall be made in disregard of the rights which Landreau may be found to possess."

These acts of the State Department and of the minister are said in some quarters to be unofficial. When a minister plenipotentiary, in pursuance of express instructions from the Secretary for Foreign Af-

fairs, comes between the authorities of two belligerent nations negotiating for peace with a *notification* addressed to both for the avowed purpose of preventing a treaty to which otherwise they might consent, it is impossible to say that the proceeding is unofficial. If the minister had violated his instructions by neglecting or refusing to give the notification, would he not have been justly chargeable with a breach of his official duty?

In the case of a contract between a citizen of one country and the sovereign of another, the government of the private party has no right to do more than communicate the facts and express its opinion upon their effect. This is the exercise of good offices. Did we confine ourselves to good offices when we threw Landreau's claim between Peru and her victorious enemy, "so that no definitive treaty of peace should be made" without a provision for its ultimate satisfaction? Peru was engaged in a disastrous war, and we notified her that she should make no peace without settling Landreau's claim. Would we have proposed terms more harsh than these if we had threatened her with a war of our own? These were not good offices, not the impartial advice of a friendly mediator, but the urgency of a power intent upon forcing from her distress what her sense of justice had denied.

Chili was as much averse to this proposed American basis of a treaty as Peru. Neither of them was willing to have anything to do with Landreau or his exploded fraud. It could not be expected that the successful belligerent would share the fruits of victory with him, nor would the conquered country voluntarily diminish its means of buying off the invaders of its soil. It was perfectly natural, therefore, that both parties to the war should reject the proposition with indignation.

The dispatches of August 4 and December 16, 1881, say, in words too plain to be misunderstood, that no treaty could or should be made with the approbation of the United States unless it contained a stipulation in favor of Landreau. The words admit of no other construction. In the dispatch of August 4 the belligerents are to be notified that no definitive treaty shall be made in disregard of Landreau's rights. Did these words signify nothing? If they had a meaning, what was it? It is not possible to understand them except as an expression of our determination to look with extreme disfavor upon any adjustment of the troubles between Peru and Chili which would not promote the interests of Landreau. It was a palpable effort to make Landreau a party to the treaty. Whatever concessions might be made by one of the belligerents to the other, our influence was to be so used that both would yield to Landreau.

The disgrace brought upon our government by producing this unjust demand at such a juncture of affairs was wholly without a shadow of excuse, even if the claimant had been entitled to our protection. But he was a French citizen, for whose fortunes, good or bad, we were in no way responsible.

We volunteered to take up the case of this extravagant stranger after his own government had cast it off. The Secretary did not see this important point correctly—most likely did not advert to it at all—therefore he called it "this claim of an American citizen," which is a very confusing mode of speech. It was exclusively the claim of Theophile Landreau, who is not, and does not pretend to be, an American citizen. If it be said that John C. Landreau is an American citizen, the answer is obvious that it was no claim of John's, for it is not founded on any contract or agreement with him, express or implied, and had not its origin in any transaction to which he was a party.

The United States had a deep interest in bringing about a peace between Peru and Chili. As the leading power on this continent, our government was naturally looked to with the respect which national power always inspires, and it might easily have maintained the ascendancy to which it was entitled. But when the belligerents perceived that, instead of counseling moderation and justice, our authorities were to use their influence to import false and foreign elements into the negotiations, all confidence in our friendly intervention was destroyed.

PERRY BELMONT.

INVESTIGATION AS TO CERTAIN PAPERS MISSING FROM THE DEPARTMENT OF STATE.

COMMITTEE ON FOREIGN AFFAIRS,
Washington, March 6, 1882.

The committee met at 3 p. m., to proceed under the following preamble and resolution, adopted by the House of Representatives February 24, 1882:

"Whereas it is alleged, in connection with the Chili-Peruvian correspondence recently and officially published upon the call of the two Houses of Congress, that one or more ministers plenipotentiary of the United States were either personally interested or improperly connected with business transactions in which the intervention of this government was requested or expected; and

"Whereas it is further alleged that certain papers in relation to the same subjects have been improperly lost or removed from the files of the State Department: Therefore,

"*Resolved*, That the Committee on Foreign Affairs be, and they are hereby, instructed to inquire into the said allegations, and ascertain the facts relating thereto, and report the same, with such recommendations as they may deem proper; and they shall have power to send for persons and papers."

TESTIMONY.

SEVELLON ALDEN BROWN sworn and examined.

By the CHAIRMAN:

Question. What is your connection with the Department of State?—Answer. I am the chief clerk of the department.

Q. How long have you served in that capacity?—A. Since July, 1873.

Q. What are your duties in relation to the receipt of correspondence and the custody of papers, &c.? State it in your own way, and fully.—A. I have the general supervision of the correspondence and the work of the department.

Q. When letters are received at the department what is done with them?—A. Letters received at the department, if addressed officially, are opened usually by myself, or in the Bureau of Indexes and Archives. If there is anything to indicate that they are private, and if addressed to the Secretary, they are sent to him. After the letters are opened by myself or in the Bureau of Indexes and Archives, they are entered in the registers, and then they come to my desk, where they are either sent to the bureaus or to the Assistant Secretaries of State. As to many of the letters, which are of a routine character, I give the directions and they are sent directly to the bureaus without being submitted first to the Secretary. Those that I think require his attention or that he wishes to see are sent to the Assistant Secretaries.

Q. What is the custom and practice as to the custody of papers, and as to having access to the papers in the various bureaus of the State Department; who has access to them?—A. All the clerks of the department have access to the archives of the department.

Q. Are papers allowed to be taken from the department?—A. No, sir; they are not allowed to be taken from the department—that is, they are not allowed to be taken by any one over whom I have jurisdiction. If the Secretary of State, or the Assistant Secretaries of State, chose to take papers from the department I could not prevent it. It is often the case that the Secretary or the Assistant Secretaries do take papers home, when they work at night, for instance.

Q. Have you any system of checks by which to prevent the loss of papers, or by

which you can know that they are missing?—A. We have, if they are opened by myself or in the Bureau of Indexes. All such letters are entered in the registers.

Q. Could any of those papers be missing without your knowing it in the ordinary course of business?—A. Yes, sir. In time we would know of their loss, but possibly not for some months or a year. It is our custom when we receive a sufficient number of dispatches from a minister, or from consuls, or a sufficient number of miscellaneous letters, to have them bound. The miscellaneous letters are bound up to within a year, and when we came to have them bound we would know whether any papers were missing, but not until then.

Q. They might be gone some time, then, without your discovering it?—A. Yes.

By Mr. KASSON:

Q. Does your register show the receipt of a letter at the Department of State written by Mr. Jacob R. Shipherd to Mr. Blaine, under date of the 21st of May, 1881?—A. (Referring to the register.) It does.

Q. Is there a note on the register of the contents of that letter?—A. There is.

Q. Please read it.—A. The entry here is "Shipherd, Jacob R., Peruvian Company, organized for the purpose of paying the claims of American citizens against Peru for violation of guano contracts, foreign bondholders, Chilean war indemnity, &c., providing Peru will give it the right to work guano-beds, &c.; prospectus of company with other papers inclosed; requests protection of the United States."

Q. To whom was that letter addressed?—A. The register does not show to whom letters are addressed. It merely shows the persons from whom they are received.

Q. And all letters addressed to any officer of the department, or to the State Department generally, would be entered in that way in your register?—A. All such letters are entered in that way.

Q. Will you turn now and see if there is a note of the reception of a letter from Mr. Shipherd under date of May 25, 1881, and, if its contents are noted, read the note which there appears.—A. (Reading.) "Shipherd, Jacob R., May 25, 1881, Peruvian Company, prospectus of, with other papers inclosed, asks that the documents be presented to Mr. Hurlbut, and that he be granted an interview before Ministers Kilpatrick and Hurlbut go to their posts."

Q. I ask the same question touching a letter from Mr. Shipherd, dated May 31, 1881?—A. There is such a letter entered here. "Shipherd, Jacob R., May 31, 1881, Peruvian Company, refers to conversation had with the United States minister to Peru, and states that they are ready to advance money to Chili, &c., providing the United States will support them in their legal and equitable rights, &c.; desires a personal discussion with President and Secretary of State relative to."

By the CHAIRMAN:

Q. To whom was that letter addressed?—A. The record does not show.

By Mr. KASSON:

Q. I ask the same question with reference to a letter from Mr. Shipherd, dated June 4, 1881?—A. There is such a letter, entered as follows: "Shipherd, Jacob R., Peruvian Company, transmits letter of 2d instant, addressed to S. A. Hurlbut, United States minister to Peru, giving his observations concerning the plans, intentions, and wishes of the company in their claim to the ownership of the guano deposits discovered by Cochet, &c., and requesting minister's comments thereon."

Q. I ask the same question touching a letter from Mr. Shipherd, dated June 21, 1881?—A. There is an entry of that letter here: "Shipherd, Jacob R., Peruvian Company, submits a translated reprint of an old Peruvian pamphlet relative to Cochet guano claim."

Q. Please answer the same question touching a letter from Mr. Fisher to Mr. Evarts, or the department, dated July 13, 1879.—A. Such a letter is noted: "Horace N. Fisher, July 13, 1879, neutrality of the United States in the Chili and Peru-Bolivian war; torpedo-boat shipped from the United States to Peru was seized by request of Chilean consul at Panama; other shipments of similar nature are expected; suggests that the United States consul at Aspinwall be instructed to examine suspicious-looking packages."

Q. I ask you the same question touching letter of Mr. Fisher, dated July 14, 1879?—A. The note of that is, "War between Chili and Peru-Bolivia; progress of recent engagements; general review of the position of the belligerents."

Q. I ask you the same question touching a letter from Mr. Fisher, dated November 7, 1879?—A. That letter is noted "November 7, 1879, war between Peru-Bolivia; reports progress of."

Q. By whom were those entries made in the register of the contents of those several letters?—A. The entry of the letter dated May 21 is in the handwriting of Mr. Newton, a clerk in the Index Bureau. The letter dated May 25 is entered in the handwriting of Dr. St. Clair, who is at present chief of the Consular Bureau. The entry of the letter of May 21 is in the handwriting of Mr. Newton; the entry of the

letter of June 4 is in the handwriting of Mr. Newton, and the entry of the letter of July 13, 1879, is in the handwriting of Mr. Flechter.

Q. Is Mr. Flechter still in the department?—A. He is not.

Q. When did he leave?—A. Two years ago, I believe. He was dropped from the rolls.

Q. Mr. Fisher's letter of July 14, in whose handwriting is the entry of that?—A. That is in Mr. Flechter's handwriting, and also the entry of the letter of November 7.

Q. All the entries there of letters of Mr. Fisher are made in the handwriting of Mr. Flechter?—A. Yes, sir.

By the CHAIRMAN:

Q. Do you know where Mr. Flechter is now?—A. I do not.

By Mr. RICE:

Q. Mr. Fisher resides in Boston, does he not?—A. He resides in Boston. He was at one time consul to Chili, I think. He went to South America as the bearer of dispatches from the department some time ago, and wrote letters to the department on his way and after his arrival there.

By Mr. KASSON:

Q. About what time did he go?—A. I do not know on what day he went nor in what month, but he was there at the dates of those letters.

Q. Mr. Evarts was then Secretary of State?—A. Mr. Evarts was then Secretary of State.

Q. And Mr. Fisher was sent out by Mr. Evarts?—A. Yes, sir; simply as bearer of dispatches.

Q. Dr. St. Clair and Mr. Newton, I understand, are still in the department?—A. They are.

Q. Have you any personal recollection of the receipt of the letters about which I have inquired, or of having examined them?—A. I have not.

Q. Have you any particular recollection of what was done with those letters when received—whether they were referred to the ordinary custodian of the files or to some other officer of the department?—A. From the entries of those letters I infer that they were not first received in the Index Bureau, but were received by the Secretary of State, and were entered after they came to us. Two or three of the entries are in the handwriting of clerks who were afterwards employed on the indexes, and the entries were inserted out of their proper order, as often occurs. Whenever we find a letter which has been received by the Secretary, as sometimes we do, it may be two or three weeks or a month before it comes to us, and then we have to enter it out of its proper place.

Q. These entries are not first indorsed upon the paper itself, but are first made in the register?—A. The entry is made in the register, and at the same time an indorsement is made on the corner of the letter, "Entered."

Q. Do you say, touching all these letters from Mr. Shipherd, that they appear to have been entered in the register some time after their reception?—A. The letters from Mr. Shipherd, with one exception, I think, appear to have been entered some days or weeks after their receipt.

Q. But when entered, the letters were in the possession of the Bureau of Indexes and Archives?—A. Yes, sir.

Q. Have you any knowledge of the letters about which I have inquired being called for after these entries were made in the register of their contents?—A. I have no definite recollection; but it is my impression that they were called for on several occasions after they were filed in the Index Bureau.

Q. Do you recollect where they were last sent?—A. I do not.

Q. Were they called for by officers of the department or by some outside persons?—A. By officers of the department.

Q. But returned in every case, so far as you know, after being called for?—A. That I could not say.

Q. You say they were called for several times?—A. It is my impression that they were called for on several occasions.

Q. The date of the last call for them, then, you are not able to give?—A. I am not.

Q. When was their loss first discovered?—A. Their loss was first discovered when we were preparing the correspondence to be sent in answer to the call of the House.

Q. Do you recollect reading those letters, so as to be able to testify to the accuracy of this summary of their contents which appears in the register?—A. I do not. The first time my attention was called to Mr. Shipherd's correspondence was by seeing a letter returned by Mr. Hurlbut. I never took any interest in the matter until then. When I saw that the letter had been returned I thought there was something wrong about it. That was the first of Mr. Shipherd's letters that I read. I do not remember the date of it.

Q. Was that prior to the discovery of the loss of these letters, or since?—A. O, long prior to the discovery of their loss.

Q. And at that time these letters from both Mr. Shipherd and Mr. Fisher were on file, were they?—A. I could not say as to that.

Q. Have you any knowledge of any person outside of the department calling for these letters at any time?—A. I have not.

Q. Have you any distinct opinion to express in regard to the manner in which they could be lost without the knowledge of the officers in charge of the Bureau of Indexes and Archives, where they were filed?—A. I have not.

Q. Your habit, of course, is to respond to any call from the Secretary or the Assistant Secretary for any paper on your files?—A. Yes, sir.

Q. And then you await its voluntary return by the officer calling for it?—A. Yes, sir.

Q. But you have no recollection of the date or the occasion on which any of these missing letters were last called for?—A. No, sir; I have not.

By the CHAIRMAN:

Q. Have you a distinct recollection of who called for them at any time, or who had them?—A. I have not. Possibly Mr. Haswell, who is with me, and who has charge of that bureau, may be able to answer that question. The calls for correspondence are very often made directly to the head of that bureau, and do not come through me.

Q. What search have you made for these papers?—A. We made a very thorough search at that time, and also since then. On Saturday afternoon I had a dozen or fifteen clerks searching for the papers, and they searched very thoroughly without finding them.

Q. Explain briefly the mode in which that search was made.—A. As I say, the diplomatic and consular correspondence is kept in pigeon-holes until we have enough for a volume for each country, and then it is sent to the bindery to be bound. It occurred to me that possibly these papers might have got into the wrong pigeon-holes, so I had every paper taken out and carefully examined; every room of the department has been searched, and the search has been very thorough, but we have been unable to find them.

By Mr. BELMONT:

Q. Did I not understand you to say that papers are sometimes taken away from the department for perusal or use?—A. It happens very often that the Secretary or the Assistant Secretaries are unable to get through their work in the department, and they sometimes take papers home in their portfolio and work upon them there.

Q. Did it occur to you to make search anywhere else but in the department?—A. Yes. I made inquiry at Mr. Trescot's house, thinking that possibly the papers might be there, as he, I think, on one or two occasions called for them.

Q. Mr. Trescot is absent, is he not?—A. He is absent.

Q. Did you not make any inquiries at any other house?—A. I gave a list of the papers to Mr. Blaine's private secretary, who made a search among his papers and reported that he was unable to find them.

By Mr. LORD:

Q. When you say that papers are sometimes taken by the Secretary or the Assistant Secretaries from the department, do you mean also to include *their* secretaries?—A. No, sir. I mean the Assistant Secretaries of State.

By the CHAIRMAN:

Q. Has your search at the department been so thorough that you are now satisfied that these letters are not in the department?—A. The search for the papers has been more thorough than any search I ever made in the department, and I have been unable to find them, yet I would be unwilling to swear that they are or that they are not in the department.

By Mr. RICE:

Q. Can you tell from the index or register how long a time had elapsed from the receipt of the letters before they were indexed?—A. I think not.

Q. You stated a while ago that some considerable time had elapsed.—A. I inferred that from the fact that the entries are made in the handwriting of a person who was not indexing letters at the time when these were probably received, judging from the dates they bear.

Q. Who is that person?—A. Dr. St. Clair was the index clerk up to the first of July, and Mr. Newton was indexing the miscellaneous letters after that, and the entries, with one exception, are in his handwriting.

Q. So that you infer that the index entries must have been made after the first of July?—A. That I cannot say, but I am positive that they were not made at the time of the receipt of the letters.

Q. Did Mr. Newton make any entries before the 1st of July?—A. I think not. He used to make entries often; but at that time, between those two dates, Dr. St. Clair was the proper clerk to index those letters.

Q. Are there any other entries of papers in the month of May in Mr. Newton's handwriting?—A. There are many entries after he took charge of those books. He had temporary charge of them; and there are entries of other letters on other subjects dated in May and June.

Q. So that there is nothing exceptional in the case of these letters?—A. It is not an exceptional case; it is a very common occurrence. A person writing to the Secretary of State may mark his letter "personal," and the Secretary may open the envelope and may keep the letter on his table some time before he gives directions as to what disposition is to be made of it. Then it comes out, and our duty is to enter it before any further action is taken.

By Mr. WALKER:

Q. Had these letters been bound at all?—A. They had not.

Q. Who is the custodian of letters when sent to the binder?—A. We have a binder employed in the department.

By Mr. BELMONT:

Q. You say you applied at the house of Mr. Trescot and to the secretary of Mr. Blaine?—A. Yes, sir.

Q. Did you apply to anybody else?—A. To no one else.

Q. Did you apply at Mr. Trescot's house first?—A. I applied first to Mr. Blaine's private secretary; that was at the time we were making up this correspondence—getting it ready.

Q. Did he have any recollection of these letters?—A. That I do not know. I have not talked with Mr. Blaine about the letters since the document was sent in; my conversation has been entirely with his private secretary.

Q. When I said "he" I meant, not Mr. Blaine, but his private secretary; did he have any recollection of the letters?—A. I think not. I think he remembered letters from Mr. Shipherd; but whether he remembered those particular letters or not he did not state.

Q. Do you know who else had these letters in his possession?—A. I do not.

By Mr. BLOUNT:

Q. Who directs the making up of the abstracts of letters? Is it done under a regulation of the department?—A. We have experienced clerks who, when the mails are opened, read over the letters and make the abstracts from them.

Q. Do you remember distinctly any person calling for these letters?—A. I do not. I have an impression, a vague one, that they were called for on several occasions; but where I am receiving perhaps twenty calls a day you can readily understand how impossible it is for me to recollect any one instance so far back.

Q. Is your recollection so slight that you do not have on your mind any impression as to who did call for them?—A. I do not remember whether they may have been called for by the Secretary or by the Assistant Secretaries, or by whom.

Q. Have you any impression as to any persons calling for them, the Secretary or the Assistant Secretaries, or outside persons?—A. I have a very distinct impression that no outside person called for them; but as to the Secretary or the Assistant Secretaries, I cannot say; I do not remember.

Q. Then it was the Secretary or one of the Assistant Secretaries who called for them?—A. It might have been Mr. Trescot.

Q. Do you know always when letters are taken out of the department?—A. I do not.

Q. Then these letters might have been taken by outside parties, or by officers connected with the department, without your knowledge?—A. They could not well be taken out by outside parties, because outside persons are not allowed to go into the private offices of the department.

Q. But these letters might have been taken out by parties outside or inside the department without your having necessarily personal knowledge of it. Was not some other person authorized to deliver such papers without any concurrent action on your part?—A. The chief of the bureau was not authorized to let them go to any one except the Secretary or the Assistant Secretaries, or to me, or to people employed in the department.

Q. You are stating the rules of the department, but what I ask is, whether those papers might not have been withdrawn by some person inside or outside of the department without any order from you?—A. Yes, sir. The Secretary or Assistant Secretary could have given an order which would have been recognized.

Q. Then, as to the matter of the taking out of these papers or letters, was your knowledge or assent necessary?—A. They could have been taken without my knowledge or assent. As I have stated, the clerks of the department all have access to the archives, and the letters could have been taken by any clerk who chose to take them.

By the CHAIRMAN:

Q. And they could have been taken without an order from the Secretary or the Assistant Secretary or yourself?—A. Not properly. They might have been stolen by a clerk.

Q. But, under the rules of the department, they could not have been taken out without an order from the Secretary or the Assistant Secretary or yourself?—A. Not out of the department.

By Mr. BLOUNT:

Q. The Secretary or Assistant Secretary might have given an order for those papers, and it would not have been necessary for that order to have gone to you at all?—A. No, sir. Their order would have been sufficient.

By Mr. BELMONT:

Q. Since the Secretary and the Assistant Secretary were the only persons who could have properly asked for those papers to take them away, why did you apply at Mr. Trescot's house in his absence?—A. Well, Mr. Trescot has been at different times connected with the department, and his call for papers was always recognized as coming from the Secretary of State.

Q. Although he did not have an official position?—A. He had no official position, but he had a room in the department at one time where he worked.

Q. That was merely a temporary arrangement with the department?—A. That was all.

By Mr. BLOUNT:

Q. You don't recollect any particular person calling for these letters?—A. I do not.

Q. You have just an indistinct impression that somebody about the department wanted them?—A. I have an impression that they were called for on several occasions, two or three or four times possibly.

By Mr. LORD:

Q. You mean that they would have been delivered to Mr. Trescot the same as to the Secretary or the Assistant Secretary, if he had called for them?—A. Mr. Trescot was often in the Secretary's room, and he would go to the Index Bureau and take papers. Sometimes he would take them to the Secretary, and it was always understood that he wanted them for official purposes and that he was at work for the Secretary.

By Mr. BLOUNT:

Q. Does this loss of papers often happen in the department?—A. During my connection with the department, I know of but four or five papers that have been permanently lost.

By Mr. KASSON:

Q. What time did Mr. Hurlbut leave for South America as our minister?—A. I do not remember. He was on the ocean, I think, when the President was shot.

Mr. BELMONT. He left on that day.

By Mr. KASSON:

Q. Was he in Washington just previous to that time?—A. He was in Washington after his appointment, but whether he left Washington directly for New York, or whether he went first to his home, I do not remember.

By Mr. BELMONT:

Q. Do you remember any one accompanying him who went with him on that day?—The WITNESS. Accompanying Mr. Hurlbut out of Washington?

Mr. BELMONT. Yes.

A. I do not know.

By Mr. KASSON:

Q. It is possible that, as it related to the affairs of Peru, he might have called to inquire as to the contents of this correspondence?—A. I am very, very positive that he only had dispatches from that legation to read before he went out, without examining these papers, unless they were handed to him for that purpose by the Secretary of State.

By Mr. BELMONT:

Q. You say that Mr. Trescot had no official position, but yet had access to official papers?—A. Mr. Trescot was sent, as you are aware, as a commissioner to China, and came back here and retained that position until the treaties were ratified, and during that time, I think, he was called upon to do certain work for the department.

Q. Yes; but he had no official position at the time when he had access to the papers of the department?—A. He was employed, I think.

Q. In what capacity?—A. I do not know exactly—as a trained diplomatist.

Q. But he had a room in the department?—A. He had.

Q. Do you remember any other letters being missing in the compilation of these dispatches?—A. I do not.

Q. Then how does it come that in the correspondence between Mr. Blaine and Mr. Hurlbut, No. 2 is contained in this volume of the correspondence and Nos. 1, 3, 4, 5, and 6 are omitted? Do you know how that occurred?—A. Letters from Mr. Hurlbut?

Q. From Mr. Blaine to Mr. Hurlbut.—A. I presume No. 1 referred to his personal instructions, telling him the amount of his compensation and instructing him about the preservation of the archives, &c.; the general instructions sent to foreign ministers.

Q. That would be the explanation as to No. 1; what have you to say as to Nos. 3, 4, 5, and 6?—A. They probably referred to routine matters of no importance. I could tell by looking at the register, or those dispatches. They were not sent here because they were not included in the call.

Q. And as to the letters from Mr. Hurlbut to Mr. Blaine, No. 2, I see, is included; do you know why No. 3 or No. 4 was not included?—A. Probably because that was a dispatch from him acknowledging Mr. Blaine's first dispatch of instruction, and accepting the appointment and telling the department when he would depart for his post. That is usually the first dispatch from a minister.

Q. No. 6 was included but No. 7 was not; what was the reason?—A. I suppose it was omitted because it was not embraced in the call.

Q. And so as to Nos. 9, 10, 15, 17, 18, 22, and 27?—A. I presume that is the reason. If the committee desire that information, I can either produce the dispatches or give you a synopsis of each.

By Mr. RICE:

Q. Your idea is that these numbers omitted contained nothing relating to the affairs of Chili, Peru, or Bolivia?—A. I have no doubt of it, sir.

By Mr. BELMONT:

Q. I suppose you have no recollection of any of these dispatches, but your opinion is that they were not included in the call?—A. That is my opinion.

By Mr. WALKER:

Q. They were in reference to matters of routine?—A. Yes; they related probably to drafts upon the department and to other business matters.

By Mr. BELMONT:

Q. But that is only your inference; you have no recollection as to any one of these dispatches which I have named?—A. No, sir; I have not.

Q. Do you remember the correspondence between Mr. Morton and Mr. Blaine? Do you remember whether No. 6, No. 30, and No. 58 are the only letters of Mr. Morton to Mr. Blaine upon the subject of Chili and Peru?—A. I do not. I think they are all the dispatches on that subject, however. I know that was the direction given, and we endeavored to carry it out as accurately as possible, to furnish everything embraced in the resolution.

By Mr. ORTH:

Q. Is there any memorandum kept of letters taken out by the Secretary or the Assistant Secretary? When they call for a particular letter is there a memorandum of it kept?—A. No, sir; there is not.

Q. Have you a distinct recollection of those letters being taken out more than once?—A. I have an indistinct recollection of hearing the letters spoken of or called for two or three times.

Q. When you say "called for," you mean that the call was complied with?—A. Yes, sir.

Q. Have you a distinct recollection of those letters being at all times returned to the parties who had custody of them?—A. No, sir; I have not.

Mr. BLOUNT [to Mr. Orth]. Do you mean the missing letters, or this correspondence generally?

Mr. ORTH. I mean these missing letters.

The WITNESS. I am speaking of Mr. Shipherd's correspondence. Whether those missing letters were embraced in that or not I cannot say, as their loss was not discovered until we were preparing this document for transmission to Congress. I may state here that I have several of Mr. Shipherd's letters with me now, if the committee wish to examine them.

By Mr. RICE:

Q. The letters that are included in this document?—A. Yes, sir.

Q. Are there any other letters of Mr. Shipherd's to any other person, in the department, that are not included in this correspondence?

The WITNESS. Do you mean relating to this subject?

Mr. RICE. Relating to any subject?—A. I am not aware of any, sir.

By Mr. BELMONT:

Q. Did you ever see Mr. Shipherd at the department?—A. I never did. I never saw him. As to the correspondence of Mr. Fisher, I may state that on Saturday, in making the search, we found one letter, an unimportant one, which I have here now.

Q. One of the three letters that were missing?—A. Yes, sir. He was consul to Chili, and the letter was filed in the pigeon-hole containing correspondence from foreign consuls. It is an unimportant letter.

By Mr. KASSON:

Q. But you say it is one of the letters that were reported missing?—A. Yes, sir; it is the one dated November 7, 1879; it is a very small letter and was slipped inside of another.

By Mr. LORD:

Q. Do you mean that there are only two letters left still missing?—A. Only two of Mr. Fisher's. None of them are of any importance.

By Mr. BELMONT:

Q. You say that the letters which are not included, and which I have mentioned by their numbers, were probably not in reference to the affairs of Chili. I see that there are letters of Mr. Hurlbut to Mr. Blaine from the 10th of August to the 17th of November, Nos. 3, 4, 7, 9, 10, 15, 17, 18, 22, and 27—ten letters which are not included in this document. Does it not seem that some of them, or all of them, must relate to the affairs of Chili or Peru, as Mr. Hurlbut was at that time in Lima and Mr. Blaine was here?—A. Not necessarily. I can answer that question definitely at any future time by the production of those dispatches if the committee desire it. I have the authority of the Secretary of State to produce anything that the committee wish.

By Mr. BLOUNT:

Q. You said a while ago that there had never been but four letters lost since you were in the department?—A. I said that I did not remember more than three or four papers ever being permanently lost since I have been chief clerk.

Q. Were they important letters?—A. One of them was the bond of Mr. Thomas B. Van Buren when he was appointed commissioner to the Vienna Exposition. They were not important letters. I know that we have often congratulated ourselves in the department on being so successful in dealing with the voluminous correspondence that we have to manage.

By Mr. BELMONT:

Q. You say that you never saw Mr. Shipherd in the department?—A. I never have seen Mr. Shipherd, to know him, in my life.

Q. Do you know whether he was ever in the department?—A. I do not.

Q. Or whether he ever had access to the correspondence?—A. He never had access to the correspondence unless it was called for by the Secretary and shown to him by the Secretary.

Q. Do you know whether he was in the department or not?—A. I do not. I never heard of his being in the department.

JOHN HENRY HASWELL sworn and examined.

By the CHAIRMAN:

Q. Please state what position you occupy in the Department of State?—A. I am chief of the Bureau of Indexes and Archives. I have held that position since the 7th of August, 1873.

Q. What are the duties of that position?—A. I have general supervision of the bureau and custody of the correspondence of the department.

By Mr. KASSON:

Q. You have heard the list of these missing letters read and the notation of their contents?—A. Yes, sir; I prepared the list.

Q. State whether you ever saw or read the original letters here referred to as missing letters?—A. The clerk who made the original index came to me and asked how the index should be made. His inquiry related particularly to the letter of May 21st. I read the prospectus over cursorily, so as to tell him how to make the index, and he made it from my dictation.

Q. You mean the prospectus referred to in the note of the contents?—A. Yes, sir.

Q. Do you recollect whether that letter was a long one, or whether it simply inclosed and referred to the prospectus?—A. My recollection is that it was not a long letter.

Q. Do you recollect whether any of these Shipherd letters were long?—A. No, sir; neither one of the letters was long. That is my impression now.

Q. Are you able to speak as to the accuracy of this notation of the contents of the letters?—A. Yes, sir.

Q. Was there anything contained in the letters of which a note is not made in this index?—A. No, sir; I do not think there was anything whatever of any importance that was not brought out in the index. We try to make our index notes as brief as possible, so as not to overburden the registers, but we endeavor to note everything with sufficient fullness to enable the reader to know what the communication contains.

Q. And from your knowledge of the manner of making these notes, and the examination made at the time, you regard the index note of the contents as complete, as omitting nothing?—A. I think there is nothing of importance omitted.

Q. Have you any knowledge of calls having been made for these letters?—A. Yes, sir; on several occasions.

Q. Will you state by whom and for what purpose they were called for?—A. I would state that the custom of the bureau is, not to permit a letter to go out to any one unless we know or are satisfied that he is a person who has authority to call for papers. We do not charge our minds with these papers. We simply know at the time that the person who calls for them is entitled to receive them; and I cannot tell who it was that called for these papers. They were called for, however, on several occasions.

Q. You receive the message from the messenger and not from the person making the call?—A. Yes, sir; sometimes the Secretary or the Assistant will send out a memorandum of the papers that are wanted, and sometimes a message by the messenger. The message generally states for whom the papers are intended. I have an indistinct recollection of Mr. Trescot sending for those papers before his departure for South America.

Q. Have you any recollection of the date when these missing letters were last called for?—A. I have not. I never charge my mind with these things. We handle some two hundred communications a day.

By Mr. WALKER:

Q. There was nothing to induce you to think more of these papers being taken out than any other papers?—A. No, sir; there was a great deal to make me think less of them. They were bulky, and I do not like to file a printed paper.

Q. Have you any knowledge that you can give the committee touching the way in which they were lost?—A. No, sir.

Q. Have you any other knowledge on the subject than that resulting from the mode of doing the business, namely, that they were called for by some authority, and, apparently, not returned?—A. That is the extent of my knowledge.

Q. You know of no one outside of the department who has ever desired or tried to get possession of them?—A. No, sir.

Q. And they have never left your bureau without the authority of one of the officers above you in the department?—A. No, sir.

Q. Has a search been made for them by you in connection with others?—A. A thorough search has been made by me in every room in the building. I had a dozen clerks engaged in making the search on Saturday, and they handled every loose paper in the department.

Q. A missing paper from Mr. Shipherd, inclosed under date of June 21, appears by the index to have been a translated reprint of an old Peruvian pamphlet, relative to the Cochet guano claim. Was there anything except the letter transmitting this printed pamphlet?—A. That was all.

Q. The letter of June 4, do I understand that to have been a letter simply transmitting a copy of a letter he had written Mr. Hurlbut?—A. Yes, sir.

Q. Then there is nothing within your recollection of the contents of any of these missing letters, of which note is not made in this index?—A. Nothing.

By Mr. BELMONT:

Q. Of course, in this mass of correspondence you would not be likely to recollect the contents of all the letters that you indexed?—A. No; I have a general knowledge of them.

Q. You did not charge your memory with these letters which are here referred to, or their contents?—A. No, sir.

Q. Is the purpose of making the index to interpret the meaning of the letters, or to identify them?—A. To identify them, simply.

Q. Therefore you did not attempt to interpret the meaning of any of these letters?—A. No, sir.

Q. Therefore you do not know what is meant by these words in the note as to the letter of May 21, 1881: "Requests the protection of the United States"? You do not know upon what terms or conditions?—A. No, sir; I do not remember. The idea was that the United States should protect this company in their vested rights.

Q. You have that general recollection, without remembering the details of the letter itself?—A. That is all.

Q. You say you have an impression in regard to Mr. Trescot calling for these letters; have you an impression as to any other person calling for them?—A. Nobody excepting the Secretary.

Q. Have you any impression that the Secretary called for them?—A. Well, somebody in authority called for them besides Mr. Trescot. I do not think it was any bureau officer, because no bureau officer would require them.

Q. Have you made any inquiries about them outside the department?—A. I have. I went to see Mrs. Trescot.

Q. Of course she knew nothing about them?—A. I saw her Saturday evening. She said she had no recollection of the papers, and did not believe they were there, but she would make a search on the following day, Sunday. On Sunday I called, and she reported that she was unable to find them.

Q. Did you inquire anywhere else?—A. I did not.

Q. Did you ever see Mr. Shipherd in the department?—A. I never saw him in my life.

Q. Did you ever hear of him as having been in the department?—A. No, sir. I would state that at least four of these letters from Mr. Shipherd were received, not through the Index Bureau, but from the Secretary, and long after they were received in the department, or at all events long after their date.

By Mr. RICE:

Q. How long after?—A. They were received in my bureau perhaps a day or two before the 20th of June—three of them, and one on the 11th of July.

Q. Which one on the 11th of July?—A. The one of June 21.

Q. And the others were received when?—A. Perhaps a day or two before the 20th of June.

Q. Received from the Secretary, do you mean?—A. They came to me through the chief clerk, in the ordinary course of business, and I found that they were unindexed.

Q. They came to you through the chief clerk; do you mean Mr. Brown?—A. Mr. Brown. There was only one of Mr. Shipherd's letters received in the mail, in the ordinary course of business, by my bureau. That was the one of May 25. It was received on the 26th of May.

By Mr. BELMONT:

Q. What reason did you have to suppose that Mr. Trescot might have those letters in his possession?—A. Well, we recognized his authority to call for papers, and my recollection was that he had called for those papers.

Q. What authority did Mr. Trescot have to call for papers?—A. The authority of the Secretary.

By Mr. KASSON:

Q. Mr. Trescot was afterwards sent to Peru and Chili by the State Department, was he not?—A. Yes, sir.

By Mr. BELMONT:

Q. Do you remember the date of Mr. Hurlbut's departure for Peru?—A. I think he telegraphed from New York on the 2d of July, in relation to the assassination of the President.

Q. Do you remember any one from Washington who accompanied him?—A. I do not.

Adjourned.

WASHINGTON, D. C., March 10, 1882.

FRANCIS O. ST. CLAIR sworn and examined.

By the CHAIRMAN:

Question. Are you connected with the State Department?—Answer. I am.

Q. In what capacity?—A. At present I am chief of the Consular Bureau.

Q. How long have you held that position?—A. My commission dates on the 6th of June, 1881. I did not take possession of the office until the 22d of June.

Q. What are your relations to the correspondence of the department?—A. I have charge of the consular correspondence; of the dispatches from, and the instructions sent to, consuls.

Q. What is the method of receiving such correspondence, and preserving it?—A. The dispatches are received at the department either through open mail or in dispatch pouches. If in dispatch pouches, the pouches are opened in the mail-room in the presence of the chief clerk. The mail matter for the department proper is then

carried to the Index Bureau. That portion of it that is for the consular branch is put on the desk of the index clerk who has charge of the consular matters. The diplomatic portion is put on the desk assigned for it, and the miscellaneous portion of it on the miscellaneous desk. The clerk then opens the mail, stamps it with the date of receipt, arranges it according to the countries alphabetically, and indexes it on a register for that purpose. The important dispatches then go to the chief clerk, and from him to the Secretary or Assistant Secretary.

Q. When examined by the Secretary or chief clerk, where is that correspondence sent?—A. It is sent to me to have their orders carried out, which are ordinarily indicated by a pencil direction in the corner.

Q. When it comes into your custody, who has access to it or may have access to it?—A. Any person may have. In other words, it is not under lock and key at all.

Q. But whose authority would you recognize in giving it out?—A. The authority of no one except the Secretary, Assistant Secretary, or chief clerk.

Q. You would act under their directions?—A. Yes.

Q. Have you any knowledge of the missing letters of Mr. Jacob R. Shipherd?—A. The only knowledge I have of them is this: I stated at the outset that I was now in the Consular Bureau. Your inquiry seems to tend to finding some miscellaneous papers. For seven years previous to the date I have just given, I had charge of the miscellaneous indexing in the Index Bureau.

Q. Describe in the same way the course in relation to the miscellaneous correspondence.—A. The majority of the miscellaneous communications comes, of course, through the open mail, from portions of our own country. The great mass of it is addressed to the Secretary of State, and comes to my desk, or what was then my desk; I open it, stamp it, and index it, just as I have described in regard to the consular matter, and it follows the same course. Thousands of letters never go to the Secretary or chief clerk, because they are mere formal matters. But all important letters go to the chief clerk, and from him to the Secretary. When the Secretary has taken action upon them and decided what is to be done on the subject, they come back to the chief clerk and are distributed to the respective bureaus; the consular letters go to the Consular Bureau, and those in regard to diplomatic matters go to the Diplomatic Bureau. Some go to the clerk on accounts and some to the clerk on the library. I remember indexing one letter from this gentleman, Shipherd. The name was a little unusual, and I remember very well that I first wrote it Shepherd. That was about the 25th or 26th of May, 1881. There was a printed document with it, which bore some red figures on it, and also (if my memory serves me) something written in red ink. I have been asked in relation to it, and I have insisted that something was written on it in red ink; but others seem to think that I am mistaken about that. That is the only one of the Shipherd letters I remember that I have indexed. I did index that letter.

Q. Are you able to give, from memory, the substance of the index that you made?—A. I think I introduced it, as I generally do, by stating the leading points. It was about the Peruvian-Chilian war; at least that was the subject, and I think it was introduced in that way. Then it stated that there was a prospectus inclosed, and I think there was some correspondence with other individuals, or some correspondence which the writer proposed to submit to the ministers, or something of that kind; I think it asked for an interview with the ministers.

The CHAIRMAN. I will read the printed extract:

“Mr. Shipherd to Mr. Blaine, May 25, 1881.

“Peruvian Company, prospectus of, with other papers inclosed; asks that the document be presented to Mr. Hurlbut, and that he be granted an interview before Ministers Kilpatrick and Hurlbut go to their posts.”

The WITNESS. That is the letter I refer to.

Q. As a rule, how fully does this index give the substance of letters?—A. Just simply enough to enable the letter to be found. That is the rule, unless there is some particular point in the letter. If there had been a correspondence carried on, and if the writer was about to accept or refuse something, I should be very apt to state it in the index thus: “Accepts the department’s proposition,” or “Refuses the department’s proposition,” or whatever it might be.

Q. Then these index entries are made more as a matter of reference than for the purpose of giving an abstract of the document?—A. Yes.

The CHAIRMAN (reading):

“Mr. Shipherd to Mr. Blaine, May 21, 1881: ‘Peruvian Company organized for the purpose of paying the claims of American citizens against Peru for violation of guano contracts, foreign bondholders, Chilian war indemnity, &c.; providing Peru will give it the right to work guano beds, &c.; prospectus of company, with other papers inclosed; requests protection of the United States.’”

Have you any recollection as to that?

The WITNESS. No, sir. It seems to me that I have had those letters in my hand. It seems to me that several of them were on my desk for some time, but long after their date.

Mr. BLOUNT. The date of their reception?

The WITNESS. No, their date. It often happens that a gentleman comes into the department, goes to the Secretary, deposits with him a letter, and discusses it. That letter may remain on the Secretary's table for a month or a year, and then come to the Index Bureau, where it is stamped with the date of its reception in that bureau.

The CHAIRMAN. The next entry is—

"Mr. Shipherd to Mr. Blaine, May 31, 1881: 'Peruvian Company refers to conversation had with United States minister to Peru, and states that they are ready to advance money to Chili, &c., providing the United States will support them in their legal and equitable rights, &c.; desires a personal discussion with President and Secretary of State relative to.'"

Have you any recollection of that?

The WITNESS. I think I have seen it, but I am sure I did not index it.

The CHAIRMAN. The next is—

"Mr. Shipherd to Mr. Blaine, June 4, 1881: 'Peruvian Company transmits letter of 2d instant, addressed to S. A. Hurlbut, United States minister to Peru, giving his observations concerning the plans, intentions, and wishes of the company in their claim to the ownership of the guano deposits discovered by Cochet, &c., and requesting ministers' comments thereon.'"

Have you any recollection as to that?

The WITNESS. I cannot say as to that; but they all seem familiar to me.

The CHAIRMAN (reading):

"Mr. Shipherd to Mr. Blaine, June 21, 1881: 'Peruvian Company submits a translated reprint of an old Peruvian pamphlet relative to Cochet guano claim.'"

The WITNESS. I do not recall that at all.

Q. Have you any recollection of any of those letters being called for by any persons?—A. Yes; some time after I was made chief of the Consular Bureau (possibly in August) there was a great call for the Shipherd correspondence.

Q. Who called for it?—A. I do not know, but there was a call for it, I think, in the fore part of August.

Mr. BELMONT. Was it in the beginning of the month?

The WITNESS. I cannot say; it is just a shadow in my mind. I should think it was before the 10th of August. However, the date is very uncertain in my mind. There was a call for it, and they came to me because they found that this particular letter was indexed in my handwriting. I said that I did not know where it was; that I had had it, and had indexed it. I went up stairs and searched for it in the files, but failed to find it. I think I went to Walker Blaine and asked him if the Secretary had called for those papers. His reply was, I think, that he did not know, or that he would see. He either said that he had seen the letter at the house, or that he would see if it was at the house. That was all that there was of it. The letter was not found.

The CHAIRMAN. Have you engaged in the search for these missing letters?

The WITNESS. No, sir; I have not.

By Mr. RICE:

Q. The letter of May 25 is the one of which you have the most distinct recollection?—A. Yes, sir.

Q. That letter, according to the index, contained a prospectus of the Peruvian Company, and asked that the documents be presented to Mr. Hurlbut. Mr. Hurlbut was the minister to Peru?—A. Yes.

Q. Do you recollect at what time Mr. Hurlbut left for Peru?—A. No, sir.

Q. Have you any information as to whether these documents were presented to Mr. Hurlbut?—A. None, whatever.

Q. Have you any means of telling when you indexed this letter of May 25?—A. I think it was indexed the day I received it—the 30th or 31st of May.

Q. Did you open the letter?—A. I am unable to say.

Q. I suppose that within five days from its date that letter was in your hands?—A. Yes.

Q. And was by you indexed?—A. Yes.

Q. And then in August that letter was missing?—A. Yes. I think that all these letters had been called out a day or two before that.

Q. Who called for them?—A. I am unable to say. My impression is that it was either the Secretary or Mr. Trescot.

Q. Have you any impression that any other person than either the Secretary or Mr. Trescot called for these letters at any time?—A. No, sir.

Q. If persons claiming to be counsel for Mr. Shipherd had visited the Department and asked to see these letters, would you have shown them to them?—A. Not except on an order from the chief clerk, or Assistant Secretary, or Secretary.

Q. And you recollect no such occurrence?—A. No, sir; nothing of the sort occurred.

Q. So that you have no impression that any other person, from the time when these

letters were indexed until it was ascertained that they were lost, called for them except the Secretary or Mr. Trescot?—A. None, whatever.

Q. At the time you ascertained that the letter of the 25th of May was missing, had it come to your knowledge whether the other letters of which you have been inquired about were missing?—A. I think it was stated that other letters were missing, and I refused to be in any way responsible for any which I had not handled.

Q. You had not handled them?—A. I had not indexed them, but I believe they were on my desk for some time.

Q. Who indexed the other letters from Mr. Shipherd to Mr. Blaine?—A. I learned, by reference to the book a few days ago, that they were in Mr. Newton's handwriting. My recollection is that when I left the bureau I left these letters on my desk as dead matter.

Q. Then these letters were not indexed until some time after their date?—A. A long time after.

Q. Have you any knowledge as to where they had been from the time of their probable receipt until the time when you saw them on your desk?—A. I have no knowledge. I simply supposed that they had been with the Secretary.

Q. At what time did you first see them on your desk?—A. I should say it was after my entry of this letter of 25th of May. It must have been after that.

Q. When was this letter indexed?—A. About the last of May. It is doubtful whether I ever saw the letter of June 21, because I left the bureau on June 22.

Q. How many letters unindexed were on your desk at the time you refer to?—A. I am unable to say.

Q. What is your impression?—A. I have not much impression about it. My impression is made from the fact that on looking at the book I find that the index is in another handwriting. There was nothing about these letters to impress them particularly on my mind, for I get thousands of letters and do not pretend to charge my mind with them.

Q. In August you discovered that these letters were missing, and you then spoke to Mr. Walker Blaine about them?—A. In August the discovery was made that they were missing, and I was called upon to find this letter which I had indexed, if I could; and I tried to find it. I said that I had indexed one of the letters, and that I would try to find it; but that I would not be responsible for the others at all.

Q. Did you say anything to him about the fact that other letters were missing at that time?—A. My recollection is that I asked Mr. Blaine if he had seen these letters, and if they were not with the Secretary; and his reply was, I think, that he had not seen them, or that he did not know where they were; but that they were either at the house, or might be at the house. My reason for going to Mr. Walker Blaine was this: that another communication, or at least a report which I had made, was missing, and that I knew I had sent it to the Secretary. We could not find it, and Mr. Walker Blaine said he would cause a search to be made for it at the house; that is the reason why I went to him about these letters.

Q. Did that report have reference to Peru or Chili?—A. No, sir; it had no connection with that subject.

The CHAIRMAN. After that did you receive any further response from Mr. Walker Blaine?—A. No, sir; I did not.

By Mr. RICE:

Q. Did you ever say anything to the Secretary on the subject?—A. No, sir.

Q. Or did you hear the Secretary say anything in reference to it?—A. No, sir.

Q. Did Mr. Trescot frequently call for papers?—A. Yes, sir.

Q. Did you require an order from the Secretary to deliver papers to Mr. Trescot?—A. No, sir.

Q. Did you assume that Mr. Trescot was authorized to call for papers?—A. Yes; I assumed that. He had an office in the building.

By Mr. ORTH:

Q. What do you mean by his having an office there?—A. He had a room assigned to his use.

Q. Was he in the employment of the government at that time?—A. I cannot say; but my understanding is that he was employed as counsel.

By Mr. RICE:

Q. Who succeeded to his room when he left and went on his mission?—A. I think that the lady copyists did.

Q. Has careful search been made in that room for these letters?—A. I do not know. However, there were only a simple desk and a few chairs in the room.

Q. When you said that there was a great call for the Shipherd correspondence, you only mean that the call was from the Secretary and Mr. Trescot, so far as your recollection goes?—A. That was all. It was like any other missing paper. There was a great uproar there this morning because they could not find a paper, but it was found finally.

Q. Did the Secretary call for it?—A. I do not know.

Q. Was this great call for these papers before or after you had discovered that they were missing?—A. That was the way I discovered it, from the call. I suppose that an order was sent to the Index Bureau, where all unbound papers are supposed to be filed, for those papers, and they were not found.

Q. Then it was the result of the call which led to the discovery that these papers were missing?—A. Yes, sir.

Q. And that call came from the Secretary or from Mr. Trescot?—A. That is my understanding.

Q. And the call from Mr. Blaine or Mr. Trescot brought to your knowledge the fact that these letters could not be found?—A. Yes. I am quite certain that it was a call from the Secretary.

Q. That was the first knowledge you had that the papers were missing?—A. I think that before that I had heard considerable talk about their not being able to find the Shipherd papers. I think they had been missing once or twice before that; I am sure that they were, or some one of them.

Q. What was the occasion of your attention being called to them before that?—A. Probably it may have occurred in this way, that perhaps the Diplomatic Bureau had a direction to issue new instructions, and, in order to do that understandingly, it wanted these papers. I simply state that as a supposition.

Q. Under whose control is the Diplomatic Bureau?—A. Under Mr. Adee.

Q. At all events, the fact that the letters were missing was elicited by a call from some officer of the department who had a right in the matter?—A. Certainly.

Q. Has Mr. Fisher furnished to the department copies of the letters from Mr. Fisher to Mr. Evarts within a short time?—A. Just before I came away to-day I stepped into the Index Bureau, and was told there that Mr. Fisher had sent them in this morning. I asked to see them; and, lying on the corner of the desk was a package of papers which was said to be copies of these papers. I did not have a chance to read them at all.

Mr. RICE stated that Senator Hoar had informed him yesterday that Mr. Fisher had sent to him copies of the original letters, and that he had deposited them in the State Department.

The WITNESS. That fact was communicated to the department with Mr. Fisher's letters, as I was told in the Index Bureau.

Q. As to this letter of May 25, which you indexed, and which is the only one of whose contents you could have had any personal knowledge, you stated that the index does not cover the contents of the paper. Was there anything which attracted your attention in those papers beyond what you have stated?—A. No, sir; I cannot give any better idea of it than I have done. I know that the general impression made on my mind was that it was a kind of wild-cat scheme, and that is not an unusual thing.

By Mr. ORTH:

Q. Do you keep memoranda of letters that are taken out by any person?—A. We do not permit any original communications to leave the department.

Q. But suppose the Secretary or Assistant Secretary should call for a particular letter, do you make any memorandum of it?—A. Not oftener, perhaps, than once in 50 times. There is a regulation requiring that to be done, but it is not carried out.

Q. You said a while ago that only certain persons who were authorized could get these letters from you; who are they?—A. Any one who would come to me with an order from the Secretary, or Assistant Secretary, or chief clerk.

Q. When Mr. Trescot came for letters did he have an order from either of those parties?—A. I do not know that Mr. Trescot came and got letters himself. He may have done so, but it is more likely that he would have sent to the chief clerk for those letters, and the chief clerk would order them sent to Mr. Trescot.

Q. Was Mr. Trescot in the employment of the government in August, 1881?—A. I do not know.

Q. You say that he called for those letters?—A. I think he had them, but I did not say he called for them.

Q. Why do you think he had them?—A. Because I know that he had the Chili-Peruvian matters under consideration.

Q. In what capacity did he have them under consideration?—A. I cannot tell you.

Q. Was it officially or privately?—A. I cannot tell you. My impression is, however, that he was in the employment of the government.

Q. After his employment as minister to China had ceased?—A. I do not know when that did cease.

Q. But before he was appointed specially to go to Chili?—A. I suppose so.

Q. I understood you to say that you indexed the letter of May 25, and you refer to other papers that were inclosed with it. Do you recollect the character of any of these papers?—A. I have tried to give my impression about them. My impression is that they were either the correspondence that had actually taken place, or which he desired to have take place in regard to this claim—suggested correspondence.

Q. You do not recollect anything in reference to the contents of these other letters?—

A. No, sir. I do not suppose that I read more than one-third of them.

Q. You say in your index that Shipherd asked to be granted an interview with Ministers Kilpatrick and Hurlbut. Do you know whether he had any such interview?—A. No, sir; I do not.

By Mr. LORD:

Q. You say that when the Secretary called for any papers they were sent to him?—

A. Yes.

Q. And that when the Assistant Secretary or chief clerk called for papers they were sent to them?—A. Always.

Q. By what means were these calls made? If the Secretary wanted a paper did he send a messenger for it?—A. Generally.

Q. And if the Assistant Secretary wanted a paper?—A. He would send a messenger for it.

Q. And if Mr. Trescot wanted a paper would he send a messenger for it?—A. No. Mr. Trescot would probably send to Mr. Brown for it.

Q. But usually papers were delivered through messengers, were they not?—A. Yes; ordinarily.

Q. Do you mean uniformly?—A. No; not uniformly; because, for instance, if the Secretary sent for a paper the message might be delivered in a manner which would cause me to think that the paper he wanted was not the paper asked for; and in that case I would take it myself to the Secretary or the Assistant Secretary, with the explanation that that was the paper called for, but that I supposed the paper wanted was this other paper. Otherwise I would just hand the paper to the messenger.

Q. Any messenger purporting to come from a person authorized to call for a paper would receive it?—A. Certainly; without hesitation.

Mr. DEUSTER. But of course you would know him to be a messenger of the department?

The WITNESS. Certainly. No one was allowed in the Index Bureau except an officer of the department or a person known to be employed by the department. That is an order which is carried out very rigidly.

Mr. ORTH. Is there any special messenger who carries these messages to you—I mean any one particular messenger?

The WITNESS. No, sir. Any messenger who happens to be within call of the bell.

Mr. BELMONT read the following section of the Revised Statutes: "Section 5408. Every officer having custody of any record, document, paper, or proceeding specified in section 5403 who fraudulently takes away, or withdraws, or destroys any such record, document, paper, or proceeding filed in his office or deposited with him, or in his custody, shall pay a fine of not more than \$2,000, or suffer imprisonment at hard labor not more than three years, or both, and shall, moreover, forfeit his office and be forever afterwards disqualified from holding any office under the Government of the United States." (To the witness.) There is only one of these letters that came into your possession?

The WITNESS. Only the one that is indexed; but I am under the impression that two or three of the others were on my desk. I am quite positive that they were.

By Mr. LORD:

Q. How long would letters lie on your desk before they were indexed?—A. If it was what we call "live matter," it would be indexed the day it was received, or the next day; but if it were "dead matter," it would lie there until some Sunday when I happened to be at the department.

Q. What do you mean by "dead matter"?—A. Matter which showed by its date that it had been already before the Secretary and had probably been acted upon. The only reason for indexing it then would be to put it in such shape that it could be found if called for.

Q. You mean to say that part of these letters you considered dead matter, and part live matter?—A. Yes; the one which I indexed I called live matter.

Mr. RICE. Because it came into your hands about its date?

The WITNESS. Yes, and was probably opened by myself.

By Mr. BELMONT:

Q. When did you next see this letter of the 25th of May?—A. I have no recollection of seeing it after it was indexed.

Q. Into whose possession did it go after it was indexed?—A. Into the possession of the chief clerk.

Q. Who has the final custody of these letters?—A. The chief of the Index Bureau, after they are disposed of.

Q. That is where this letter should be now?—A. Yes, sir.

Q. You say that Mr. Trescot often called for letters?—A. Yes, sir.

Q. Did he have any duties whatever in the department?—Mr. Trescot was at work in the department a good deal of the time, preparing reports.

Q. Did he have anything to do with the preparation of the dispatches for Chili and Peru?—A. I cannot say of my own knowledge, but my impression is that he did.

Q. Had he had, to a certain extent, charge of the correspondence with Chili and Peru?—A. No; I should not say he had charge of the correspondence.

Q. But it came in the line of his duty?—A. I think it was assigned to him to prepare a draft.

Q. He prepared the drafts of the dispatches, which were afterwards revised and sent?—A. It is my impression that he did.

Q. Your impression is that he prepared the dispatches first?—A. That he prepared the drafts.

Q. And then the Secretary revised the drafts and sent the dispatches?—A. If Mr. Trescot did prepare the drafts it was so done.

Q. And your impression is that he did prepare drafts?—A. That is my impression—that he was engaged in that work.

Mr. WALKER. Have you any knowledge of that of your own?

The WITNESS. Not the slightest.

By Mr. BELMONT:

Q. Mr. Trescot prepared the dispatches for Peru and Chili?—A. My impression is that he was engaged on that work—preparing matter and laying data before the Secretary, as he did in other cases in early times.

Q. He had a room in the department?—A. Yes.

Q. But at the same time you do not know that he had any official position?—A. No, sir; I do not know anything about it.

Q. You said that he was counsel?—A. I said that I supposed he was acting in that capacity.

Q. Was he recognized in any official capacity in the department?—A. I do not know that I can exactly answer that question. I said that I did not know that he had any official position.

Q. What was his business before he went to China?—A. Mr. Trescot was for quite a long time before he went to China busy at the department preparing abstracts and furnishing data for the Secretary, on which his instructions were finally based.

Mr. ORTH. Did Mr. Trescot hold any official position in the department before he went to China?

The WITNESS. He never did hold an official position in the department that I know of.

Mr. BLOUNT. You said that Mr. Trescot was engaged there as in earlier times. What did you mean by that; what was he doing in earlier times?

The WITNESS. I will give you an illustration: There was a good deal of correspondence and a great deal of statistics collected previous to the Halifax Fishery Commission, and Mr. Trescot was employed (at least I suppose that he was, for he did work) in looking over the facts and looking over the correspondence. He was very busily engaged.

Mr. DEUSTER. He acted merely as private secretary?

The WITNESS. Exactly.

Mr. DEUSTER. And he was perhaps paid by the Secretary as such?

The WITNESS. He was employed just in that way. He had no official capacity that I know of; that is to say, he was not commissioned by the Secretary or by the President.

Mr. LORD. You mean to say that you think he was in some sense employed by the department?

A. I do, most certainly.

By Mr. BELMONT:

Q. Do you know anything about the search that was recently made for these letters?—A. I had nothing to do with it. I was told that I was to be called into the search, but I begged off. I had to work too hard at something else.

Q. But at the time they were first called for in August, you say there was a search?—A. Yes; there was a search.

Q. Those who called for the letters were satisfied that they could not be found?—A. I did not know that they could not be found until, I think, since Congress called for the correspondence.

Q. Your impression was at that time that they had been found?—A. If I had any impression at all it was that. The whole thing was dismissed from my mind as soon as I discovered that I could not find the particular letter.

Q. Did you think that they were found at that time?—A. I had not any doubt of it at all.

Q. You thought they were found?—A. I supposed they were. I had no question about it.

Q. Then you have no question, but that the letters which were called for by the Secretary in August, were found?—A. I had no question of it; I had no reason to doubt it at all. I believe the letters will be found again. I have not the slightest idea that they have been abstracted.

Q. And you think they were found at that time?—A. I think they were.

Q. Who do you think found them?—A. I have not any idea at all.

Mr. DEUSTER. Have you any idea in whose possession they are now?

The WITNESS. My idea is that they will be found some time with Mr. Trescot's papers at his house. That is just a volunteer opinion. I have expressed it in the department, and I express it here without hesitation.

The CHAIRMAN. You mean his house in this city?

The WITNESS. Yes.

The CHAIRMAN. Have you any special reason for thinking the papers were found at that time?

The WITNESS. Only the fact that I heard no more about their not being found.

By Mr. BELMONT:

Q. In making your index, you simply intended to identify the letters?—A. Not to make a complete abstract of them. For instance, we index none of the arguments.

Q. It is only for the identification of the letter?—A. Yes, sir.

Q. So that reading an extraet as we have it here would not give any indication of what the letter was really intended to mean, except so far as that there are a few sentences written out here for the identification of the letter itself?—A. That was all in that case.

Q. And you believe that this letter was found in August?—A. I had no reason to believe otherwise, because there was no more call for it.

Q. It was called for by the Secretary?—A. That is my impression.

Q. It may have been called for by Mr. Trescot?—A. It may have been, but from the uproar made about it, I judge that the call was from the Secretary. It makes considerable difference in the department whether it is the big man or the little man who calls for a paper.

Mr. LORD. Do you mean that this paper, after having been lost, was found, and was again lost?

The WITNESS. That is my impression, because I heard no more about the paper; and if the Secretary had wanted that paper, and it could not have been found, it would have been tolerably warm for those in the Index Bureau.

Mr. BLOUNT. And that is the only fact on which you base your opinion?

The WITNESS. That is it; and from my seventeen years' experience there, it is pretty good ground.

Mr. RICE. If Mr. Blaine had known the letter to be lost——

The WITNESS. I should not like to have told him.

By Mr. BELMONT:

Q. Then you think that the letters were found?—A. I think they were found; and I base my idea upon that very thing, that I heard no more complaint about their not being found.

Q. I wish you could recollect the date when they were called for early in August?—A. I cannot recollect it. I may be considerably out of the way, but I am under the impression that it was in the early part of August.

Mr. WALKER. Your statement of your belief that the letters were then found, was simply because you heard nothing further in reference to them?

The WITNESS. That is it.

Mr. WALKER. You have nothing to indicate that they were found?

The WITNESS. Nothing whatever. My duties in the index room had ceased long before that.

The CHAIRMAN. But you think if they had not been found, you would have heard a good deal more about it?

The WITNESS. I think so, because the whole department would have been in an uproar.

Mr. WALKER. That would be the case, would it not, in relation to the loss of any document?

The WITNESS. You can be assured that it would be.

By Mr. BELMONT:

Q. Since the second search was made, do you know whether calls have been made for these same letters?—A. I know that they have been called for by Congress, and that a thorough search was made for them.

Q. But you know of no one else calling for them?—A. Not that I am aware of. When Congress called for them that was the first information that I had that the papers were wanted.

Mr. WALKER. Is it likely that there are other gentlemen employed in the department, or who seem to have occupation there, without your knowledge of their being employes of the department? In other words, may other gentlemen have been there in the same character as Mr. Trescot, and yet you not know anything more definitely about them?

The WITNESS. It would be possible, but not probable. I think that Mr. Trescot's relations were just the same as those that were held by Mr. Cushing for years. The Secretary would send for Mr. Cushing, and say: "General, I want you to take these papers and prepare an abstract for me." Mr. Cushing did so, and it was generally understood that he occupied that position in reference to Mr. Seward and Mr. Fish.

Mr. RICE. He was a trained diplomatist who was called upon for such services as as the Secretary might desire him to perform?

The WITNESS. Exactly, in order to relieve the Secretary of the tedium of going through long-winded communications and condensing them.

Mr. BELMONT. He made the drafts of dispatches?

The WITNESS. Yes; he put them in an abstract form.

Mr. DEUSTER. He acted as an adviser?

The WITNESS. Perhaps so. Of course I do not know what his relations were.

Mr. WALKER. Other gentlemen have sustained about the same relations to other Secretaries of State as Mr. Trescot did?

The WITNESS. Yes, sir.

By Mr. RICE:

Q. Have you any knowledge of the letters of Mr. Fisher to Mr. Evarts?—A. I never had any knowledge of them. They were indexed on the consular files.

Q. Have you any knowledge of what the subject of them was?—A. I was not aware until within a few days that they were lost.

Q. Is any memorandum made in reference to these letters—as to whether they are answered or not, and, if answered, by whom?—A. Yes; a corresponding index is kept of the outgoing matter, just exactly the same as of matter received.

Q. But all the information in that respect would be found in the index furnished to us here, and in the letters which are there indexed from the department to Mr. Shipherd?—A. Yes.

Q. There would not have been any other communications than what these letters contained?—A. No, sir; I have no reason to suppose that there was ever anything else at all: not the slightest.

Q. That is, the index of the letters received, and of the responses, is one index?—A. No, sir; they are two books entirely distinct. One book has a record of everything that comes into the department, according to the date of receipt, and is abstracted as you see there. The outgoing correspondence is arranged alphabetically; and in that book are entered the answers to the letters that have been received.

Q. This index furnished to us of these letters, is it taken from both those books?—A. Yes; the incoming and the outgoing correspondence.

By Mr. BELMONT:

Q. Where did you say the final custody of these letters was?—A. In the Index Bureau.

Q. Do you know whether this letter of May 25 reached the Index Bureau?—A. I never saw it afterwards. The last I saw of it was when I carried it to the chief clerk.

Q. You never saw it after it left your desk?—A. Not that I am aware of.

Q. And the usual course would be that it would go to the index clerk?—A. Yes; and from him to the Secretary, and from the Secretary to the chief clerk to be assigned to such bureau for answer as the business properly belonged to. After it had been answered and the letters signed, then the bureau chief would send the answered letter back to the bureau, there to be filed.

Q. But you could not trace this letter any farther than the chief clerk?—A. No, sir.

Q. It passed from your possession into his?—A. Yes; because it was important enough to carry it before the Secretary. If it had been an unimportant letter, and had been sent to the Diplomatic Bureau, it would have had the letter "G" put upon it to indicate that it had been carried there. If it had gone to the Consular Bureau, it would have had the letter put upon it indicating that fact.

Q. Does anybody have access to the Index Bureau?—A. All the clerks of the departments have.

Q. So that any clerk could go in there and take out a letter, if he pleased?—A. Yes.

Q. Then the room of the Index Bureau is not locked, and anybody can go there day or night?—A. Anybody who has authority to enter that room.

Q. They can go there at night or in the evening?—A. Any such person as I have described.

Q. The room is always open?—A. Yes, sir.

Q. So that any person can go there in the evening and take letters?

The WITNESS. If you restrict your "any person" to clerks in the department.

Mr. BELMONT. I mean clerks in the department.

A. Certainly; any of the clerks who have access to the department can visit any room in the department.

Q. And take out any letter from the Index Bureau?—A. Yes.

Q. And all you know about this particular letter is that it went from your desk to the chief clerk?—A. That is all.

Q. And that is the last you saw of it?—A. That is the last I saw of it.

Mr. LORD. Have you any other knowledge of the matter, to which your attention has not been directed by inquiry, that has a bearing on this examination?

The WITNESS. No, sir. I think that is all. I have expressed my belief that these letters would be found. That was a volunteer suggestion. I believe that these letters are with Mr. Trescot. It is not a novel experience at all for a paper to be lost and to remain lost for a long time, and then to be discovered. One very important book of records was missing for a year, and was finally found under the cushion of the Second Assistant Secretary. His chair had been a little too short. It is not a novel thing at all.

Mr. BELMONT. Have papers ever been lost out of the Index Bureau?

The WITNESS. We do not call them lost out of the Index Bureau, unless they can be charged on the Index Bureau. They are called for, and if they can be traced, so that they were last seen in the Index Bureau, we have to admit that they had been misplaced; and they are frequently misplaced.

Mr. BELMONT. Do you know whether these letters were seen in the Index Bureau?

The WITNESS. No, sir.

By the CHAIRMAN:

Q. Have you any special reason for your belief that these letters are in the possession of Mr. Trescot?—A. Only this: that we once lost a lot of fishery papers, and after considerable search we gave up searching for them; and, some days afterward, Mr. Trescot, who was searching for them himself, discovered them among some papers in his house.

Q. And, engaged as he was, you think that he would naturally have these papers?—A. Yes; he would naturally have them in his portfolio.

Q. And may have left them at his residence?—A. Yes, sir.

By Mr. ORTH:

Q. Where is Mr. Trescot's residence?—A. On the corner of L street and Vermont avenue.

Q. Is there anybody there who would have access to them in his absence?—A. I do not know. I never was in his house.

T. JOHN NEWTON sworn and examined.

By the CHAIRMAN:

Question. Are you employed in the State Department?—Answer. I am.

Q. In what capacity?—A. I have been attached to the Index Bureau for about eight years.

Q. Are you engaged there now?—A. I am.

Q. You have heard Mr. St. Clair's statement in relation to these letters?—A. Yes, sir.

Q. State what connection you had with them, and what you know in relation to them?—A. After Mr. St. Clair was appointed chief of the Consular Bureau, I took charge of his desk. Among other letters that I found there were three or four letters from Mr. Shipherd. After indexing my morning mail I took up what Mr. St. Clair has termed "dead matter" and indexed it. In this "dead matter" were these three or four letters from Mr. Shipherd.

Q. Did you index the letter of May 21st?—A. I did.

Q. And the letter of May 31st?—A. I did.

Q. And the letter of June 4th?—A. Yes, sir.

Q. You indexed all of them except the one that was indexed by Mr. St. Clair?—A. Yes, sir.

Q. When did you take charge of the Index Bureau?—A. I think I was working there about a day when Mr. St. Clair went to his bureau. I think I took charge about the 21st of June, 1881.

Q. Have you any recollection in regard to these letters?—A. I remember the letters pretty well. The one of May 21st had a lot of printed documents with it, if I mistake not. I think that a similar document was attached to the letter of May 25th, and also one to a later letter. It was numbered with red numbers, and was marked "Private; return to Jacob R. Shipherd, No. 10 Spruce street, New York." Two or three letters had the same papers; that is, he sent two or three copies at different times. I cannot recollect how long the letter of May 21st was, but it seemed quite lengthy. He was very verbose in his writing, and inclosed these printed documents.

Q. In indexing these letters do you read them at length?—A. Yes, sir.

Q. What do you aim to do in making your index?—A. To give an idea of what the letters contain.

Q. Do you intend to embrace the substance of them?—A. No, sir; just to give an idea of the substance.

Q. A description by which they can be identified on the index?—A. Yes.

Q. Were you inquired of at any time for any of these letters?—A. Not until the publication of these documents.

Q. Who made the inquiry then?—A. I believe the inquiry came from Mr. Davis, the present Assistant Secretary.

Q. Have you assisted in the prosecution of the search?—A. I have.

Q. What has been done?—A. A very thorough search has been made in the department.

Q. Describe it.—A. We first went through the Index Bureau, commencing, of course, with the miscellaneous letters. None of those letters have been bound since February, 1881. We took all the loose letters and examined them very carefully, month by month. After that we went through the different bureaus.

Q. From the search which you made in the Index Bureau are you positive that these letters are not there?—A. I am. From there we went up to the other bureaus. We took, for instance, the Diplomatic Bureau and examined every paper on the desks and in the drawers, even among the drafts of letters which are thrown on one side in cases. From there we went to the room which had been occupied by Mr. Trescot. I examined that room myself thoroughly, and the papers were not found here. In the mean time the other clerks were examining in the Consular Bureau. In fact every place about the department was examined.

Q. About how long did this search occupy?—A. I should suppose almost a week.

Q. Was Mr. Trescot in the habit of calling upon you for papers?—A. No, sir; he never was in the habit of calling on me for papers.

Q. So that you know nothing about whether he had them in his possession or not?—A. No, sir.

By Mr. BELMONT:

Q. When did you last see this letter of May 21st?—A. On the day I indexed it.

Q. You never saw it after that?—A. No, sir.

Q. Where did it go from your hands?—A. To the chief clerk. These papers were lying on the desk when I went there. I do not recollect whether they had been acted upon, or whether there was any indorsement of the Secretary on them. I presume that there was not, or I should not have brought them back to the chief clerk. If they had had the indorsement of the Secretary to file them they would have gone to the files immediately; or, if they had been indorsed for some action of a bureau, I would have sent them to that bureau and marked that on the book.

Q. And the last you know about them is that they went to the chief clerk?—A. Yes; that is my impression.

Q. Do you know anything about search being made for them outside of the department?—A. Nothing, except what Mr. Haswell told me. I suggested to him that these papers might be with Mr. Trescot. I do not know why I suggested it, except that he was going down there and might have a chance of looking for them.

Q. Do you know whether any search was made anywhere else outside of the department, except at Mr. Trescot's house?—A. Yes; I believe that Mr. Sherman, Mr. Blaine's private secretary, reported that he had made a thorough search for them at Mr. Blaine's house.

Q. He did not say that they had been there, did he?—A. No; he said he did not recollect having ever seen them at all.

Q. Who asked Mr. Sherman about them?—A. I believe the chief clerk.

Mr. LORD. Have you any theory of your own about these papers?

The WITNESS. No, sir; I have not. When Congress called for this correspondence it was the first intimation I had that these papers were missing. Then we made a search for them.

By Mr. BELMONT:

Q. Do you recollect a call being made for them in August?—A. No; although I thought at the time when the search was made for these documents that they might have been called for when Mr. Hurlbut was receiving his instructions in the summer.

Q. In June or August?—A. In July, I think. I think he left here about the 1st or 2d of July.

Q. What made you think that they were called for at that time?—A. I cannot give any reason except that Mr. Shipherd had suggested that Mr. Hurlbut be instructed on the subject, and had requested an interview.

Q. Did you ever see Shipherd at the department?—A. No, sir.

Q. Did you ever hear of his being there?—A. No, sir.

Adjourned.

WASHINGTON, D. C., *March 15, 1882.*

JACOB R. SHIPHERD sworn and examined.

By the CHAIRMAN:

Question. Where do you reside?—Answer. I reside at Richmond Hill, Queen's County, New York.

Q. What is your occupation?—A. I am a counselor at law.

Q. What business enterprises, if any, have you been connected with during the last several years?

The WITNESS. That is a broad biographical call. I can go back three, or five, or ten years. But perhaps I do not quite understand the purport of your question.

The CHAIRMAN. I would like to have you go generally over the last ten years, of course not at length, and state anything that you are free to state in regard to your business history during that time.

The WITNESS. I do not know that I have done anything to be ashamed of; but I do not know just why, in this connection, I should enter upon a biographical history.

The CHAIRMAN. The committee does not insist upon it; but I supposed that you might perhaps desire to make a statement.

The WITNESS. The chairman is very kind. But, if you will indulge me, I have simply this instinct in the premises. I have been somewhat thrust on public notice of late, without any will or seeking of mine, directly or indirectly. I do not court publicity, and, above all, I do not desire any opportunity to put myself before the country or the public. Anything touching the affairs of the Peruvian Company of which I can give information, as an executive officer, I will give with the greatest pleasure.

The CHAIRMAN. How long have you been engaged in business at your present residence?

The WITNESS. I have resided where I now am about six years.

The CHAIRMAN. I desire to call your attention to the abstract of a letter dated May 21, 1881, purporting to be from yourself to Mr. Blaine, Secretary of State. The abstract is as follows:

"Peruvian Company organized for the purpose of paying the claims of American citizens against Peru for violation of guano contracts, foreign bondholders, Chilean war indemnity, &c., providing Peru will give it the right to work guano-beds, &c.; prospectus of company, with other paper inclosed; requests protection of the United States."

I desire to ask if you wrote a letter of that description to the Secretary of State?

The WITNESS. My recollection is that I did.

The CHAIRMAN. Have you a copy of the letter in your possession?

The WITNESS. I have a copy of the letter, I suppose, in my letter-book in my office. At this point, if the chairman will indulge me, I may say generally in regard to these letters known as the missing letters, that I received the summons of the committee under circumstances which I detailed in a letter to the chairman; and I immediately set my secretary to work to prepare copies of these letters from my letter-books. Shortly afterwards I received a telegram from the chairman saying that the committee desired me to appear promptly this morning. At the last moment, when I was ready to leave my office, I found that the copies were nearly completed; but they had not been revised, and it was simply impossible to complete the revision and, as required, to come here promptly. So I had no choice but to leave the papers behind me, because I could not bring them in an incomplete state. I am prepared to have the revision completed, and to submit them to the committee at the earliest possible moment.

The CHAIRMAN. How many letters are there?

The WITNESS. I have not examined, because I have been occupied every moment with my regular professional business, but I suppose that all the letters indexed here are in my possession.

The CHAIRMAN. There are four letters, dated May 21, May 25, May 31, and June 4, purporting to be written by you to the late Secretary of State, Mr. Blaine; are those the letters that you refer to?

The WITNESS. They are. My recollection accords with the abstract as stated here.

Q. Are these lengthy letters?—A. My impression is that they are several pages each. My recollection is that one of them is quite long.

Q. Which one?—A. I should say the letter of June 4. I only fix it by my general recollection that about that time I forwarded a letter of considerable length.

Q. About how many pages of letter-paper or foolscap, in your opinion, would that letter cover?—A. Somewhere from twelve to fifteen.

Q. And the others are short letters?—A. My recollection is that they are.

Q. When did you receive the subpoena?—A. On the afternoon of the 9th of March.

Q. Have you a force of clerks under your control at your office?—A. I have.

Q. About how many?—A. Three.

Q. Was it not practicable for you to prepare those copies and to bring them with

you?—A. There is only one clerk whom I would allow to look in my letter-book and files, the one who acts as my private secretary.

The CHAIRMAN. As you have suggested, the committee specially desired to examine you in regard to those letters.

The WITNESS. I am aware; and if the committee had allowed me an option in the premises I could have been prepared within twenty-four hours. I can only say frankly that I have stated, without any reservation or coloring, the exact facts. I had just returned to my office after a fortnight's absence, and found my desk piled with professional work. Without any disrespect to the committee, I could not leave everything, nor do I suppose that the committee would expect me to give my whole time to this work. There has not been an hour's delay on my part.

Q. When do you expect these copies?—A. I suppose they are finished by this time. But I suppose that the committee will expect me to testify in regard to them, and, if so, I must compare them with my letter-books.

Q. Are your letter-books in New York?—A. They are.

Q. Were you not directed by the subpoena to bring with you your books and papers?—A. I am not aware that I was. (Referring to the subpoena and reading.) "That he bring with him the following papers, to wit: Copies of the letters written by him to the Hon. James G. Blaine, then Secretary of State of the United States, of the following dates (here follow the dates); also, copies of all letters written by him to Hon. William M. Evarts, Secretary of State of the United States, or to Hon. James G. Blaine, Secretary of State of the United States, between the dates June 1, 1879, and February 1, 1882; also, copies of all letters written and sent by him between said dates to any minister, consul, or other official of the United States, relating to affairs in Peru, Bolivia, or Chili, and to any matters of property or of business in which he was, or claimed to be, interested in said states; also, all letters received by him between said dates relating to said matters, from either of said honorable Secretaries of State, or from any United States minister, consul, or other United States official."

Q. Did you examine any of those copies before you left New York?—A. I examined them, not in detail; but they were in my hands.

Q. Why did you not bring those that were complete?—A. Because I had not revised them; neither had my secretary. He had not compared them for errors, and I had not compared them with the letter-books, and I would be utterly unable to give testimony in regard to them.

Q. Could you not have done so before leaving?—A. I could not.

Q. When were they completed?—A. They were in the state that I have mentioned when I left my office on Monday evening.

Q. What time did you leave your office?—A. At my usual hour, about four o'clock on Monday afternoon.

Q. When can you have these letters to testify?—A. As soon as I can return to New York and compare them.

Mr. ORTH. Do you mean within twenty-four, thirty-six, or forty-eight hours?

The WITNESS. The committee is aware of the time that it takes to go to New York. I suppose that two hours would be sufficient time to compare them.

Mr. ORTH. Can you have them here to-morrow morning?

The WITNESS. No, sir.

By Mr. RICE:

Q. Does your answer cover the other letters to which reference is made in your subpoena?—A. No; I have been speaking merely as to those mentioned in the chairman's question.

Q. So that in order to get all these letters ready and to have them here you would require more time?—A. I suppose that if I were to set my secretary to work it would take him at least two weeks to make copies of all the correspondence covered by the subpoena, if I rightly construe it.

Q. Would it be possible for you to bring your letter-books here and to read those letters to the committee, so that the stenographer can take them down, thus saving you the trouble and delay of copying them?—A. I might do that; but I have the instinct, which I suppose gentlemen of this committee will sympathize with, of the danger of taking letter-books which contain a very large variety of private and confidential matters, and bringing them before this committee, running the risks of transportation and all that sort of thing. I am prepared to do anything in reason.

The CHAIRMAN. Are the letter-books in the custody of your private secretary or clerk now?

The WITNESS. They are in such a way that they could be forwarded on my order, I have no doubt.

The CHAIRMAN. Are you willing to have them forwarded?

The WITNESS. If the committee will indulge me I will make a suggestive inquiry or two, which may simplify the situation. The question has arisen whether the com-

mittee really desires me to furnish copies of all my letters (for example) addressed to Mr. Hurlbut, because the originals are to be found at the State Department. These letters constitute the bulk of the correspondence, and the ordinary rule is that the originals are the best evidence. It is not claimed that they are lost, except as to those four letters mentioned, and these of course I am prepared to furnish.

The CHAIRMAN. Of course the committee does not desire you to produce any letter, copies of which are contained in this volume from the State Department.

The WITNESS. The order is comprehensive; of course I am not here to construe it.

Mr. RICE. That subpoena covers letters received by you?

The WITNESS. Yes; all letters sent and received.

Mr. RICE. And, of course, of those you have quite a number?

The WITNESS. Yes; but a very much less volume.

The CHAIRMAN. The purpose was to make the subpoena broad enough to cover everything.

The WITNESS. After the committee has passed on that suggestion, I have one or two others to make in the same line.

Mr. BLOUNT. Omitting the work of copying the letters which you received and confining your work simply to the letters which you have written, how soon can you furnish copies of them?

The WITNESS. I can answer that now, or I can answer it after I shall have submitted another question to the committee. That is, as to the construction given to the words "other official of the United States." Conceivably there may have been correspondence with members of Congress and other parties; and I am not quite clear whether it was the intent of the committee (and I desire to meet its intent, whatever it was) to cover the whole case. If the committee will define that to me, the work may, under that definition, be limited. There is one other suggestion, and that is whether it is the intent of the committee broadly, as phrased here, to call for all correspondence of whatsoever nature that may have passed between me and persons connected with the United States Government; or whether it is the intention of the committee to limit it to correspondence touching this Chili-Peruvian matter. And finally I want to know whether, in such correspondence, I shall furnish all that passed, or only such as passed with reference to the possible official action of the official with whom I was corresponding. I wish to be instructed on those points, and then I will endeavor to meet the views of the committee.

The CHAIRMAN. The subpoena was formulated by Mr. Rice, and I will leave your question to him.

Mr. RICE. It was the intention of the committee that you should produce all the letters which you had received from that somewhat broad class of persons known as United States officials generally, including members of Congress; as well as all correspondence with the State Department, or other department of the government.

At this point of the examination the committee-room was cleared for consultation, and, finally, it was ordered, on motion of Mr. Kasson, that the witness produce copies of all correspondence addressed to any United States minister or officer of the State Department touching the subject-matter of this inquiry; all letters addressed to witness by such officer and relating thereto; all correspondence and copies of correspondence passing between the aforesaid which throw light on the subject-matter of this correspondence; also, all other correspondence and copies of correspondence which tends to show any relation of such officers to the business transactions referred to in the resolution.

The further hearing of the case was then postponed till Saturday, the 18th instant.

WASHINGTON, D. C., *March 18, 1882.*

The chairman laid before the committee the following letter, received by him from the witness, Jacob R. Shipherd:

RICHMOND HILL, L. I., *March 17, 1882.*

SIR: All the copies of correspondence called for by the committee were finished and packed last evening, and my tickets were purchased for the limited express this morning.

Almost as soon, however, as I left my office I was prostrated by a very acute attack of malarial fever, and nothing like traveling is possible to-day.

I shall join the committee the moment my physician will allow me to do so, and

my present hope is that I may be able to appear on Tuesday morning. At present I am barely able to dictate this note.

I am, sir, your obedient servant,

JACOB R. SHIPHERD,
By A. S. L.

To the Hon. CHAS. G. WILLIAMS,
Chairman House Committee on Foreign Affairs,
Washington, D. C.

(The envelope is post-marked: "New York, March 17, 1882, 12.30 p. m.")

After consultation, it was ordered that a messenger be sent to New York to ascertain and report to the committee as to the condition of the witness; and the committee then adjourned till Monday, 20th instant.

WASHINGTON, D. C., *March 20, 1882.*

The CHAIRMAN announced that he had received a telegram from Assistant Sergeant-at-Arms Kavanaugh, which he read, as follows:

"Saw Mr. Shipherd, who has been ill. He leaves for Washington Monday morning, and takes physician's certificate with him."

He also read the following telegram:

NEW YORK, *March 20.*

Hon. C. G. WILLIAMS,
Chairman House Committee on Foreign Affairs, Washington, D. C.:

I expect to reach Washington this afternoon.

JACOB R. SHIPHERD.

The further hearing in the case was then postponed till to-morrow.

WASHINGTON, D. C., *March 21, 1882.*

The witness, Jacob R. Shipherd, was in attendance.

The CHAIRMAN. The chair desires to state before the examination commences that the committee has determined upon the following order: First, the chair will question the witness, and then each member will be called, in order, to put such questions as he may desire. I shall make my own examination as general and brief as possible. If any member, at any time, desires to have a question put in the connection in which the examination is proceeding, I shall be glad, so far as I am concerned, to have him suggest it, and I will put it to the witness, so as to obviate the necessity of coming back to the point again. I am further directed by the committee to state that where a question or evidence is objected to, and where a member asks that the committee shall go into consultation, I shall require the room to be cleared, but the decision when made will be publicly announced, and no evidence will be taken except with open doors. The right to consider its own jurisdiction, the plan of examination, and the inadmissibility of testimony is a right reserved to all committees; and this committee feels that it should not abandon that right in an investigation so important as this may become. (To the witness.) Are you now prepared to produce copies of the missing letters of May 21, May 25, May 31, and June 4?

The WITNESS. May I be indulged first to say a word in reference to my non-appearance?

The CHAIRMAN. Certainly.

The WITNESS. If the chair please: Some comments—not unnatural in the premises, perhaps, and which I am not disposed to treat too seriously—having been made upon my non-appearance on Saturday last, I now ask to be supplementarily sworn in terms that will cover every representation I may make to the committee hereafter during this investigation and prior to my final discharge, and, after such new oath, to be examined at the committee's pleasure touching my non-appearance on Saturday. My preference for truth-telling and for unaffected sincerity long ago became so easy a habit that the limitations of a general oath, if the committee desire to avail themselves of it, will not be irksome; but I should be mortified indeed to have a second messenger sent to New York to ascertain whether or not I was trifling, or was capable of trifling, in such premises as the present.

The CHAIRMAN. I will say in response that, from the intelligence received, and certainly from the appearance of the witness, I do not think that there is a member of the

committee who has any doubt that Mr. Shipherd was suffering and unable to come to Washington. But the committee (and, of course, Mr. Shipherd will recognize it as well as we do) has a duty to perform, not only to him, but to the public. There being no physician's certificate, there being no telegram, and the letter which we have being from the hands of a clerk (which was perhaps very natural), the committee felt it was its duty to ascertain, in a diligent and proper manner, the facts, in order, if necessary, to communicate them to the House and discharge its duties properly. But, I repeat, I do not think that there is a member of this committee who doubts the good faith of Mr. Shipherd's statement as to the condition of his health. I should hardly think it necessary, as far as the committee is concerned, to administer an oath to him in order to substantiate it.

Mr. RICE (to the witness). The committee supposed that you were familiar with the rule of practice in the prosecution of lawsuits, that where a witness is absent, and asks to be excused, a certificate from his physician is required. You neglected to furnish that; and while your letter made a statement in regard to your condition which the committee had no right to question, still the committee felt that you had omitted that which is usual in similar cases. And I call your attention now to the fact that this certificate which you present this morning, and which is sufficiently definite and certain, is still not sworn to. It was simply the omission of a doctor's certificate that seemed to impose upon the committee the course which it took.

The WITNESS. That is why I ask now to be sworn and questioned as to why I did not telegraph, why I did not send a physician's certificate, and why the certificate I now produce is not sworn to.

The CHAIRMAN. The witness is already under oath, and the committee will accept any statement he may desire to make.

The WITNESS. When my letter was written my physician had not come to see me. He resides several miles off. I reside in a village where there is only one notary—a lawyer's clerk, who keeps his seal in New York City; and his certificate, of course, would be valueless without the county clerk's seal. My wife had remained here in Washington, and I was at home, with no one but children in the house, and I was so sick as not to be able to raise my head from the pillow for 24 hours. I did everything that mortal man could do under the circumstances. It was impossible for me to get an affidavit made; it was impossible for me to get a physician's certificate for me at that time. I trusted to the courtesy of the committee to accept my letter temporarily. I did not ask my physician to swear to this certificate, because that is not the custom in New York. I am here to be sworn as to the fact; and if that is not sufficient, I will procure the deposition of the physician. Or, he volunteered himself to say that he would attend before the committee and be examined in detail, and *ad libitum*. I did, at least, the best I could do. As to telegraphing, I did not telegraph because (although I did not reason much about it) I had the general impression that the committee would not be in general session until Saturday morning, and that it could not act in the premises before then. There was nothing so far from my ideas as the omission of any form of courtesy due to the committee, and which it was within my power to show.

The CHAIRMAN. I can say for the committee that no discourtesy was intended to Mr. Shipherd.

The WITNESS. That I understand.

The CHAIRMAN. And I presume his statement is entirely satisfactory to the whole committee. Still, I repeat, that the duty of the committee to the public would require it, under like circumstances, to pursue a similar mode of proceeding. It is due to Mr. Shipherd that his physician's certificate should be read.

The certificate was read, as follows:

JAMAICA, N. Y., March 19, 1882.

SIR: On the morning of the 17th instant I was called to attend professionally Mr. Jacob R. Shipherd at his residence, Richmond Hill, Long Island; I found him suffering from an ulcerated sore throat of a catarrhal character, with the usually accompanying high fever, headache, and prostration, being unable to leave his bed. I had visited and prescribed for him three times. A journey to Washington on or at any time since the 17th would, in my judgment, have been dangerous; and knowing Mr. Shipherd's temperament and tendencies as I do, from having been his family physician for six years past, I can only advise his return to Washington as early as to-morrow upon the condition of exceptional care for some days to come. The immediate cause of his present attack has been clearly overwork, and in his present condition a comparatively slight provocation might bring on a relapse.

Truly,

C. A. BELDIN, M. D.

Hon. C. G. WILLIAMS, Chairman, &c.,
Washington, D. C.

Mr. RICE. I do not think that the committee needs any further evidence in regard to Mr. Shipherd's illness than his own appearance and the certificate of his physician;

but, of course, if he desires to make any further statement he will be at liberty to do so.

The WITNESS. Oh, no. I do not wish to obtrude anything. I only wish to meet the views of the committee. I am entirely satisfied.

The CHAIRMAN. Will you now produce the copies of missing letters? First produce that of May 21, 1881.

The WITNESS (after searching among a number of papers which he had before him). The letter of May 21 seems for the moment to be mislaid. It is difficult for me to see how that could have occurred, for I took all the care that could have been taken in the premises. All the others I have here. The letter of May 21 was copied while I was in New York, was revised by me, and was placed in an envelope with these other letters. The envelope was not opened since to my knowledge, until I opened it this moment. The letter was addressed to the President, not to Mr. Blaine. It was presumably, I suppose, referred to the State Department. Indeed, my recollection is distinct that Mr. Stanley Brown, President Garfield's secretary, promptly acknowledged the receipt of it and stated that it had been referred to the State Department. I can only undertake to make one more effort (there seems to be some fatality connected with this business) to supply that letter. The others are all here.

Mr. RICE. Have you looked through those papers carefully?

The WITNESS. I have.

The CHAIRMAN. It is quite desirable to commence in that order.

The WITNESS. I appreciate that, Mr. Chairman. I can state almost verbatim from memory the contents of that letter.

Mr. RICE. You can get another copy?

The WITNESS. Oh, yes; here is a copy of the letter of May 25.

The clerk read the letter, as follows:

MAY 25, 1881.

SIR: On the 21st instant I transmitted to the President duplicates of the present inclosures, which, I presume, have been, or will be, referred to the Department of State.

I inclose these for Minister Hurlbut, to be handed him in your discretion and at the proper time.

The copies to the President were accompanied with a letter of explanation.

I shall be glad to be summoned to Washington, in due course, before General Hurlbut's and General Kilpatrick's instructions are prepared.

Very respectfully,

JACOB R. SHIPHERD.

To the Hon. JAMES G. BLAINE,
Secretary of State.

The CHAIRMAN. Where are the inclosures?

The WITNESS. In the State Department, I suppose. I did not understand that the committee expected me to bring duplicates of the inclosures.

Mr. ORTH. They are parts of the letter.

The WITNESS. I can state what they were. The principal inclosure was the prospectus of the Peruvian Company, which is printed entirely in this volume. I am not sure that there was any other inclosure.

Mr. RICE. On what page is it found?

The WITNESS. It begins on page 634 and continues to page 660. The other inclosures are the papers which I find printed here, beginning on page 672 with the Peruvian Company's chain of title, and including two supplementary papers, ending at the foot of page 678. These are all the inclosures, to the best of my recollection, that accompanied this letter.

The CHAIRMAN. Have you a memorandum of the inclosures, or anything further than your recollection?

The WITNESS. I have not.

The CHAIRMAN. I find on page 660 a document headed "Private draft memorandum. Return to Jacob R. Shipherd, 10 Spruce street, New York."

The WITNESS. That is a document that was not then in print. It was printed soon afterwards, and was subsequently forwarded to the State Department.

The CHAIRMAN. From what was this letter copied?

The WITNESS. From my letter-book.

The CHAIRMAN. From a letter-press copy?

The WITNESS. Yes, sir.

The CHAIRMAN. Have you personally compared it?

The WITNESS. I have. I will state precisely what my means of knowledge are. I compared it by following this copy with my eye, while my clerk read from the letter-book. I had previously examined the letter-book myself and refreshed my memory, so that I could almost state it *verbatim* from recollection. I had the assistance of a

clerk to that extent. I state, on such means of knowledge, that this is a true and full copy of the letter.

The CHAIRMAN. Now as to the letter of May 31, 1881?

The WITNESS. Here is a copy of that letter.

The letter was read by the clerk, as follows:

MAY 31, 1881.

SIR: My letter of the 21st and its inclosures were acknowledged and in part replied to through General Hurlbut, at a very satisfactory interview in this city yesterday.

The principal suggestion he made was that it might be expedient to advance some money to Chili, to meet her immediate need, and to displace the negotiations she is now engaged upon with European parties, and he asked me if the Peruvian Company would make such advances.

I desired the President to rely unhesitatingly upon the comprehensive assurance that if he will support our legal and equitable rights, as such, we, upon our part, shall be ready to supply any amount of money necessary or convenient to their utilization.

We are organizing, in other words, with a clear understanding of all the facts and probabilities of the situation, and shall not be found unready for any emergency.

The practical problems confronting us I should be glad to discuss personally with the President and the Secretary of State at their early convenience.

Very respectfully,

JACOB R. SHIPHERD.

To the PRESIDENT.

The CHAIRMAN. This was copied from your letter-book in the same manner you have described?

The WITNESS. Yes, and compared; and I testify in the same manner that it is a fair and full copy.

The CHAIRMAN. There does not seem to be any place attached to the date. Where was it written?

The WITNESS. My letters were written on papers with a printed letter-head, and, of course, the printing does not show in the letter-book. They were sent from New York.

The CHAIRMAN. Now, as to the letter of June 4?

The witness handed in a copy of the letter, which was read by the clerk, as follows:

JUNE 4, 1881.

SIR: I have the honor to inclose for the information of the President a copy of a letter forwarded yesterday to the United States minister to Peru.

Very respectfully,

JACOB R. SHIPHERD.

To the PRESIDENT.

The WITNESS. The inclosure referred to is printed in this volume. I owe an apology to the committee for not having looked up these inclosures in the printed volume; but it was simply impossible for me to do so. I can state generally that it has been referred to as the 16-page letter which I wrote to General Hurlbut at Belvidere, dated June 2, I think. It is the letter which includes that long list of names, and which begins on page 550.

The CHAIRMAN. Now, as to the letter of June 21?

The witness handed in a copy of the letter, which was read, as follows:

JUNE 21, 1881.

SIR: I have the honor to forward herewith a copy of a translated reprint of an old Peruvian pamphlet, which throws considerable additional light upon the Cochet claim, heretofore submitted for the President's consideration.

Very respectfully,

JACOB R. SHIPHERD.

To the PRESIDENT.

Mr. BELMONT. All the missing letters you addressed to the President, except the one of May 21st.

The WITNESS. That is addressed to the President. They all are.

The CHAIRMAN. To return to the letter of May 25, in which you request an interview with Ministers Kilpatrick and Hurlbut. Did you have an interview with both or either of them in pursuance of that request?

The WITNESS. I beg the Chairman's pardon. That is not what I requested—if you will be kind enough to refer to the text.

The CHAIRMAN. You say in your letter, "I should be glad to be summoned to Washington in due course before General Hurlbut and General Kilpatrick's instructions are prepared." Were you thus summoned to Washington?

The WITNESS. I was not.

The CHAIRMAN Did you have an interview with Minister Hurlbut before he left?

The WITNESS. I did.

The CHAIRMAN. Please state how that came about.

The WITNESS. The first step is set forth in this letter addressed by me to General Hurlbut, and which is not in the printed copy.

The clerk read the letter, as follows:

MAY 26, 1881.

Hon. S. A. HURLBUT,

Washington, D. C.:

DEAR SIR: Pursuant to correspondence initiated several weeks since, I sent to the President on the 21st instant a full set of papers showing a claim owned by my clients which should control the future of Peru for at least the next twenty-five years.

With these papers was an explanatory letter.

Yesterday I sent to the Secretary of State a duplicate set for your own use.

The purpose of this note is to say that I would like, if consistent with your engagements, an early personal interview—quite informal—at which I might explain to you freely and fully the policy my clients propose to pursue, and the nature and extent of the co-operation in detail which I shall ask the President to afford us.

More particularly it is our purpose and desire, and it will be our endeavor, to conduct our negotiations in a spirit so liberal and with a temper so reasonable as to avoid the necessity of diplomatic intervention.

I inclose you a single proof, which will suggest our program, and by it you will identify the parcel sent under cover to the Secretary of State for you.

I can come to Washington if necessary, and shall come whenever the President sends for me; but if I could see you *here*, and *at once*, it would oblige me, as I am exceedingly busy.

Favor me with reply by wire, and oblige,

Yours truly,

JACOB R. SHIPHERD.

The CHAIRMAN. This is a true copy of the original from your letter-book.

The WITNESS. Yes; and the inclosures therein referred to are found in the printed volume, beginning at page 675 and ending at page 677.

The CHAIRMAN. You say in this letter to General Hurlbut, "pursuant to correspondence initiated several weeks since, I sent to the President on the 21st instant a full set of papers, &c." What correspondence does that refer to?

The WITNESS. That refers to a letter which I addressed to the President back in April, and of which I intended to have produced a copy. I had not thought of it since that time. I was misled by beginning with the missing letters. I will state the substance of it. It was purely preliminary—simply a notification that I should open correspondence with him definitely at a later date. But it is a letter which, like all the other letters in the correspondence, I shall be very glad to produce.

The CHAIRMAN. You can produce it hereafter.

The WITNESS. I will, with great pleasure.

The CHAIRMAN. What occurred between you and Mr. Hurlbut in pursuance of this letter?

The WITNESS. On the morning of the 28th of May I received a telegram from General Hurlbut which seems to be missing from my files. I searched very elaborately for it while I was in New York. I have no recollection of having seen it since I first received and filed it. I have no copy of it, but I can state it verbatim, I think, with sufficient accuracy.

The CHAIRMAN. Very well, state it.

The WITNESS. The tenor was like this:

WASHINGTON, D. C., May 28, 1881.

JACOB R. SHIPHERD,

No. 10 Spruce street, New York:

I will be at the Fifth Avenue Hotel Sunday and Monday. State when and where an interview can be had.

S. A. HURLBUT.

The CHAIRMAN. In pursuance of that, what happened?

The WITNESS. In pursuance of that I sent to General Hurlbut at the Fifth Avenue Hotel a letter, of which this is a copy:

May 28, 1881.

DEAR SIR: I have your wire that you will be at Fifth Avenue Hotel Sunday and Monday. My home is on Long Island. I will come in on Monday morning, and, unless the train is late, will be with you at about 9.10 a. m.

Yours, very truly,

J. R. SHIPHERD.

Hon. S. A. HURLBUT, *City.*

The CHAIRMAN. This is a true copy ?

The WITNESS. It is a true copy.

Mr. RICE. Monday would be the 30th ?

The WITNESS. Yes ; May 30, Decoration Day.

The CHAIRMAN. Proceed with your statement of what followed.

The WITNESS. Pursuant to that suggestion I reached the Fifth Avenue Hotel somewhere about 9 o'clock on Monday morning, May 30. I met General Hurlbut somewhere in the lobby of the hotel.

The CHAIRMAN. Had you previously known General Hurlbut ?

The WITNESS. I was about to state that I recognized him, having formerly been a resident either within or close to his Congressional district, and having known him when he was in command at New Orleans. I was then the executive officer of the Northwestern Freedman's Aid Commission in Chicago, and was in New Orleans on official business. I had official business with him at his headquarters in New Orleans. We had not met since. But on recognizing him, almost instantly he called my name, recollecting me also. The recognition proved to be mutual. He invited me to some convenient sofa, and, on being seated, he opened the conversation with this remark : "But, Mr. Shipperd, your figures are enormous." That was the first word in the conversation on this business. Of course there were some mutual social courtesies interchanged. I replied, "General, I am not responsible for the figures, nor any of the facts. I take them as I find them." I cannot undertake at this distance of time (proceeding from that point) to give anything like a verbatim account of what passed. I can only give the substance, and I think I can give that with sufficient accuracy.

He stated to me that he had been sent to tell me that the President regarded my case (as made out in the printed papers) as being as strong a case, both in law and equity, as a case could well be made ; that the first difficulty in the way was the unfortunate condition of Peru ; that it would seem more than unkind to press Peru at such a time as this for a claim so large as that, no matter how just ; that the prime condition on which the President could consent to undertake it in the behalf of my clients was that the scheme should be so framed as to be remedial, and that Peru should have help under it. He went on to say that this claim should be put in such a form that the owners of the title should ultimately realize what was just, or such reasonable proportion of it as might be realized without imposing hardships upon the Peruvians, and that meanwhile it could be made a means of enabling Peru to pay her war indemnity to Chili, and thus get out from under the heel of Chili, which was likely to crush the last life out of her ; that in such a case, and on the further condition that this claim should be turned over to a company, the management of which should be in the hands of gentlemen personally known to the government, and entitled, on their records, to the confidence of the government (meaning our government), then on those two conditions the hearty support of the United States Government could be relied on.

He further declared that this claim must not be pressed in any Shylock spirit, enormous as it was ; that there was to be no expectation that it should be necessarily realized, and that we must be content to accept what was reasonable and possible in the premises, and not push it so far that it would tend to the permanent crippling of the Peruvian people. I replied generally to that statement that there was not one of those suggestions about conditions which we were not prepared cordially to accept and to submit ourselves to ; that we were well enough aware that such a claim as this must be manipulated, if at all, subject to all the conditions of reason and mercy and justice and expediency that naturally surrounded it, and that we should expect the Government of the United States to assist us, only on condition that the entire situation, so far as we were able to shape it, was so shaped that it would command the approval of every fair-minded man. I asked General Hurlbut particularly (and I may say that I asked this question in order to assure myself whether he was speaking for himself—although he was minister, I had no right to go behind his official action—or whether he was speaking for the President, or at least for the Secretary of State) whether the Secretary of State had given him the papers which I sent. "No, sir," he replied. "I have seen nothing but the single inclosure in your letter. I know nothing of the facts of your claim. I am simply reciting to you what I am told to tell you."

The CHAIRMAN. Did he state who told him to tell you ?

The WITNESS. My recollection is that with reference to the officer who instructed him he used a vague phrase, except at the outset, when he said distinctly the President at least once, and perhaps twice. I did not receive the impression necessarily that these instructions had been given him from the President's mouth, by any means, because the Secretary of State, as I understand, has a right to speak for the President, and I had no right to inquire. He used the word "President" once or twice, I think. He nowhere used the name or the office of the Secretary of State ; but he spoke somewhat officially as to what the Government of the United States would do.

The CHAIRMAN. Give, as nearly as you can, the phrase which you denominate a vague one.

The WITNESS. It was "The government," or "The United States," or, perhaps, "The Executive"—some such phrase as that.

The CHAIRMAN. What further occurred.

The WITNESS. I asked him if he wished to receive from me a copy of these papers. I did not feel at liberty to supply him with a copy, having sent them through the Secretary of State, except on his official discretion. He replied very eagerly, "I wish you to give me a set, if you can do so, at once." I handed him a set, and he nodded his thanks and said: "You may be sure that I will read them with the utmost care and attention." He then drew a card from his pocket, wrote on it his private address at Belvidere, and said that he was now on his way to his home to prepare for sailing; that he should return to New York in about twenty days; and that he should, of course, call at my office on his return; and, meanwhile, he wished that I would send him as full and unreserved an account in writing as I was willing to do, so as to give him an idea just what our plans were. I responded to that, that they were entirely inchoate; that I had been retained in the matter as attorney in the ordinary course of business; that it had been but a few weeks in my hands; that it was a chicken in the egg; and that we could only tell in the most general terms what we were disposed to do; but that that I would cheerfully tell him. He said: "I recognize the inchoate condition of this interest, and I sincerely regret it, because time is precious. Peru ought to have help at the earliest possible moment, and I trust you will press your organization." With a single unimportant remark or two following, the interview closed.

The CHAIRMAN. Was there anything more in reference to this matter?

The WITNESS. I think not. I do not recollect that there was anything touching the policy to be pursued by the government, or what course we suggested, beyond what I have said. If there was anything else it escapes my memory at this moment.

The CHAIRMAN. What next occurred in order of time between you and Mr. Hurlbut?

The WITNESS. My impression is that the next thing that occurred was the writing of my letters of June 2, 1881, to Mr. Hurlbut.

The first letter was read as follows:

LAW OFFICE OF JACOB R. SHIPHERD,
No. 10 Spruce Street, New York, June 2, 1881.

DEAR SIR: Of course we shall be glad to have yourself, so far as it may be entirely proper, and your personal friends interested with us, and I will reserve, say, \$250,000 of the pool stock subject to your advice.

Terms of payment can suit individual convenience.

Very respectfully,

JACOB R. SHIPHERD.

Hon. S. A. HURLBUT,
Belvidere.

The CHAIRMAN. Is that a correct copy of the letter?

The WITNESS. It is.

The CHAIRMAN. Was that subject referred to in the interview of May 30 with General Hurlbut?

The WITNESS. Nothing whatever touching the subject of that letter ever passed between Mr. Hurlbut and myself prior or subsequent to the writing of that letter.

The CHAIRMAN. What have you to say as to why it was written, and for what purpose?

The WITNESS. I have already remarked that I was at one time a resident (I think) of Mr. Hurlbut's Congressional district. I resided in Du Page County, Illinois, the county adjacent to the city of Chicago; and General Hurlbut resided beyond me 50 miles, perhaps, at Belvidere. I was there resident at the time when General Hurlbut was a member of Congress, or, at any rate, I think, at the time when he was defeated for Congress. During the canvass, in which his military record was disseminated broadcast by parties interested in his defeat, I had become pretty thoroughly familiar with the public sentiment as to General Hurlbut's ideas of what was proper in a public officer. About the time of General Hurlbut's appointment to go to Peru, I refreshed my memory considerably in what was then a matter of public notoriety in those former years. I consulted with gentlemen who were very intimate personally with General Hurlbut, who were of the same political party, but who were personally on good terms with him. I consulted with no one, I think, who was considered as hostile to him. The impression which was strong on my own mind was confirmed by all the advice I sought, and was this: that General Hurlbut did not consider it improper that he, at least, while holding public office, should be concerned either directly or indirectly in business interests of which he might have more or less official knowledge. The opinion which was most clearly in my own mind was thus phrased at that time by one gentleman whose advice I sought. He said, "Steve will block you at every point, if there is not something done, or provided, or suggested to be provided, for him. You can count on it. It makes no difference what arrangement you make at Washington, something has got to be done, or promised, or suggested, for him."

I took the matter, gentlemen, under very careful consideration. I never had anything to do with politics, and do not know anything about them. I know nothing about the methods which are recognized as usual and more or less to be winked at, perhaps, among politicians. I looked at the matter as a business man, as the attorney for my clients. On my own part my way was clear—perfectly clear. I never proposed to buy anybody for the service of this company. I never supposed that it would be necessary to buy anybody. But I became clearly of the opinion that there had got to be a tub for this whale in some form; that there had got to be something said or suggested which should at least stay General Hurlbut from setting himself absolutely against us at the outset. President Garfield had appointed him to be minister to Peru. When I shall produce the letter written to the President in April it will appear clearly to the committee whether or not, at the outset, this company, or I on its behalf, meddled or attempted to meddle with any official political appointment in or about this business, for in that letter I specially notified the President that we had no suggestion to make, and should have none; that we wished merely to bring to his attention the fact that we had a great interest down there which the man whom he would appoint as minister would have to deal with, so that he could select his own man whom he could trust to deal with it. After the receipt of that letter by the President General Hurlbut was appointed, and that ended the matter so far as I was concerned. I determined with myself that it would not be wise or safe for me to have any conversation with General Hurlbut touching a private interest or provision for himself or his friends, because in that case if anything occurred afterwards it would only be the word of one man against the word of another, and I was determined that whatever I said in that connection I would say in writing—say it, as I was prepared to stand by it and to meet it anywhere and everywhere. I therefore wrote this letter, gentlemen, as deliberately as I ever wrote a letter, and I have never from that day to this regretted the writing of it. I have regretted the misapprehension. I did not then foresee the chance of its being published, and of its distressing the whole nation. If I had I should certainly have been very slow to write it. But it is a letter which, so far as I am responsible for it, or for its tenor or implication, I have never been afraid to meet, and I hope I never shall be. It may or it may not have been artistic and well constructed. I thought it was, and, with all diffidence, I think so still. I think it was about as neat a way of handing him the soaped end of the stick as I could contrive.

The CHAIRMAN. I do not think the committee will question the artistic finish of the letter. Did you, in plain terms, regard Mr. Hurlbut, as a public officer, as purchasable?

The WITNESS. Purchasable?

The CHAIRMAN. Yes.

The WITNESS. Most emphatically.

The CHAIRMAN. And you proceeded on that theory to purchase him.

The WITNESS. No, sir; by no manner of means.

The CHAIRMAN. What is your construction of your act?

The WITNESS. I have said that I became satisfied that something must be done, promised or suggested to be done—

The CHAIRMAN. To control or influence his official action?

The WITNESS. No, sir.

The CHAIRMAN. What then?

The WITNESS. To prevent him from setting himself maliciously and malignantly against us from the outset. I did for him just what I would have done for a dog who was about to take my hand in his mouth.

The CHAIRMAN. In other words, was it your purpose to interest him in your project?

The WITNESS. Never affirmatively. I only hoped to prevent him from attacking us as parties who under no circumstances might do anything for him.

The CHAIRMAN. Was it your purpose, then, to buy off his opposition?

The WITNESS. Not to buy it off, but to suggest that it might be bought off. The important distinction is this: I never gave General Hurlbut anything; and until I did give him something I never did anything by way of purchase which could influence his official action. I never promised to give him anything. I only suggested that he, so far as might be entirely proper, might be interested; and he might construe that one way or another, but it would have to be construed to our mutual satisfaction before he got anything, and there is where I was absolutely safe, as I thought, and as I think still. I intended to say enough to him to persuade him to think that there might be something in this for him, and that he had better not jump upon it at the outset. I intended to produce that impression upon him. I dealt with him as I would with a man who was a recognized criminal.

The CHAIRMAN. And if he acted as you desired him to act, was it your purpose to carry out your part of the proposition?

The WITNESS. It was my purpose, so far as it should be found entirely proper, in my judgment, that he or his friends might have some advantage.

The CHAIRMAN. How, in your judgment, would it be proper?

The WITNESS. I never went a step beyond the letter. The whole purpose of the letter was to stay him from attacking us, and it served that purpose. There was no supplementary step taken beyond that.

The CHAIRMAN. But it was your purpose in this way to influence his official action?

The WITNESS. No, sir; utterly the contrary. It was intended in this way to influence his personal action—to prevent him from personally attacking us through the power of his office.

The CHAIRMAN. Then you did not expect him to oppose you officially?

The WITNESS. If the intent of the question is to ask whether I intended to influence his official action at all, I say yes, within these limits, but I must annex the limits. It was in order to influence his official action so far as to prevent him from officially attacking us without instructions from Washington.

The CHAIRMAN. Was that letter ever communicated by you, or the fact that you had written it, to any official of the government save General Hurlbut?

The WITNESS. Oh, yes, sir.

The CHAIRMAN. To whom?

The WITNESS. To Secretary Blaine.

The CHAIRMAN. When and where?

The WITNESS. In my first interview with him at his house in this city.

The CHAIRMAN. At what time?

The WITNESS (referring to memorandum book). On the 25th or 26th of July, 1881. The interview began on the evening of the 25th and lasted until about noon on the 26th.

The CHAIRMAN. At what time of the day was the interview, and who were present?

The WITNESS. The interview began on the evening of the 25th, I think, at about 8 o'clock. It occurred at the residence of Mr. Blaine in this city, on Fifteenth street. The conversation extended until a late hour, and we then adjourned until the next morning. The interview was resumed, I think, about 10 o'clock the next morning at his residence and continued until about noon.

The CHAIRMAN. Who were present?

The WITNESS. Does the committee think that to be important?

The CHAIRMAN. I think so.

Mr. BELMONT. You have already given the name in one of your letters.

The WITNESS. I understand that, and so far as those letters are concerned they speak for themselves. I will state frankly to the committee the embarrassment which arrests me at this point. There was a person present. He was a Senator of the United States. I had been professionally advised by counsel that in testifying before a committee of the House I must observe great reticence with reference to any act of a Senator.

The CHAIRMAN. It is not the present purpose of the committee to go into the investigation of a Senator.

The WITNESS. I understand that, but the question is, how far he is to be kept out if we once introduce him.

The CHAIRMAN. But still we can hardly forego an account of the interview because one person was present. Whoever the Senator may be, it is not our purpose now to press an inquiry in reference to him, but to get at the particulars of this interview between you and Secretary Blaine, and whoever else may have been present.

The WITNESS. The interview was exclusively between the Secretary and myself. The Senator who was present was present as a mutual friend, conceivably as counsel. But he was not a party to the interview in such a sense as to make his presence of any importance, and I merely wish to be careful that I am doing nothing improper.

The CHAIRMAN. We appreciate that.

The WITNESS. If the committee will temporarily waive that question I will have a little consultation, and will at the proper time meet the question without hesitation.

The CHAIRMAN. Very well. A colleague suggests that we will waive that part of the interview at present. State who else were present.

The WITNESS. No one else, except at the latter part of the interview in the forenoon, when Mr. Walker Blaine was present.

The CHAIRMAN. How was the interview brought about first?

The WITNESS. The interview was brought about by the good offices of the Senator who was present.

Mr. BELMONT. Did that Senator summon you to Washington?

The WITNESS. Well, here I am.

Mr. BELMONT. I will not press the question.

The WITNESS. I beg the committee's attention also to this fact. The Senator (whoever he was) acted there as counsel exclusively, being a counselor-at-law; and I wish to reserve whatever reservation should be made as to what passed between myself and counsel.

The CHAIRMAN. Waiving the question, are you free to state the name of the Senator?

The WITNESS. So far as I am personally concerned I am, but I should be glad to defer the final decision on that point until we get a little further on.

Mr. BLOUNT. Do I understand you to say that you put your declination on the ground that this person was your counsel?

The WITNESS. I have not intended to decline answering. I have intended simply to suggest to the committee the general fact, first, that this person is a Senator of the United States; and second, that whatever relations he may have sustained to me in the premises were those of counsel; and therefore find myself a little embarrassed at this point. I wish to proceed with caution, but I do not decline as yet, by any means, to answer the question.

Mr. BLOUNT. I should like to know on which ground you put it, whether as counsel or as Senator.

The WITNESS. I am embarrassed by both facts. That is all that I can say, and I wish to proceed with due caution.

Mr. BLOUNT. If this matter was right, why should you object to disclosing the name of an attorney?

The WITNESS. As an attorney simply, I do not think I have any objection. But he happens to be also a Senator of the United States.

Mr. BLOUNT. Then that is the real objection?

The WITNESS. The two complicate each other.

Mr. BLOUNT. How?

The WITNESS. I do not know that I can explain it. I simply state how it lies in my own mind.

Mr. WILSON. You are aware, of course, that whatever you say here cannot be used against you hereafter?

The WITNESS. There is nothing that I am not prepared to say, so far as I am concerned.

Mr. BELMONT. Did you not in your letter of August 19 to Mr. Hurlbut mention the name of the Senator?

The WITNESS. I can say generally to the committee that whatever statements were made in any of my letters are absolutely true.

Mr. LORD. You wish the committee to understand that the Senator was your counsel?

The WITNESS. He was my counsel.

Mr. BELMONT. I see that the interview of which you speak is described in this letter of August 19.

The WITNESS. It seems so.

The CHAIRMAN. I suppose there is no doubt in the mind of the committee or anybody else as to what Senator is referred to. But we want to get a statement of this interview this morning so as to finish up that branch of the case. State the interview.

The WITNESS. The interview was (taking its two parts together) so long that I have preserved in my recollection only the general result, and I think perhaps a few of the phrases or arguments or of the fractions of arguments that may have been exchanged. In the early part of our talk the Secretary requested that I should proceed to outline our case on its merits.

The CHAIRMAN. I believe you have stated that you presented the Secretary of State with a copy of this letter to Mr. Hurlbut, to which you have just referred. I would like to have you make a statement in regard to that.

The WITNESS. At some time during this interview I was at the pains to recapitulate to the Secretary all the steps which I had taken up to that time in the direction of negotiations with the government. I recited the various letters that had been written, and in order to assure myself that they had been received, &c., I referred particularly to the 16-page letter to Mr. Hurlbut, and to the fact that I had mailed a copy of it immediately to the President. Somewhere in that connection (I do not now recall the immediate suggestion which brought the matter out) I said, "There is another letter, Mr. Secretary, which I do not think you have seen. I wrote to General Hurlbut early in June"; and I then quoted to him verbatim this letter to General Hurlbut. There are very few letters which I carry verbatim in my mind, but I had my own reasons for having this letter always before me. I mentioned the fact that General Hurlbut did not come to see me in New York, as he had promised to, before sailing, although, as I understood, he was a week in New York at that time, and I thought it was a little odd. I said, "You see, Mr. Secretary, that I did not succeed in buying him, if he thought that I was trying to." Some remark was made previously by the third party present as to the folly of attempting to seduce General Hurlbut by offering to sell him stock. The Secretary nodded, and laughed, and said he did not think that we would "fetch him" (or some remark of that sort). Subsequently, at an interview much later (to which I will come in due course), the matter was again referred to and more emphatically dwelt on. There was not the slightest intimation given by the Secretary that he saw anything improper in the letter, or that he supposed I had any improper motive in writing it.

The CHAIRMAN. You can take your own course with your testimony as to this interview.

The WITNESS. I began by setting out the case on its merits, in answer to the Secretary's request. He listened with what seemed to me a good deal more than courteous attention. He seemed to be an exceedingly interested listener. He followed me very closely, now and then interjecting remarks and asking me questions, showing that he was following every point with the greatest care and attention. He suggested probable doubts from a legal point of view. I remember that he raised the question of a possible non-assignability of a "chose in action" as between nations. He said, "Here you have bought a claim." I responded, "Mr. Secretary, but we bought property; we bought guano; and they tell us that there is at least \$300,000,000 worth of it lying there—of this identical property."

Mr. RICE. What do you mean by the non-assignability of a "chose in action"?

The WITNESS. The Secretary said, "You Americans have bought the claim of a Frenchman, or of his Peruvian son, and now you come to ask the United States to interfere in your behalf on this purchase claim. Have you a right to do that?" I said, "Suppose, Mr. Secretary, that we go down there and buy ten thousand acres of land," "Oh," said he, "but that is an entirely different case." I responded, "But we bought guano; we bought property"; I remember that, in that way, he showed a disposition to satisfy himself clearly on every point that occurred to him, as I went along. Resuming the conversation in the morning—

Mr. RICE. Were the same parties present?

The WITNESS. With the addition of Mr. Walker Blaine in the latter part of the interview. I do not think that he was there all the time. Indeed I discovered him sitting near me. He had entered sometime, without my observing him, from an adjoining room.

The CHAIRMAN. How late did the evening interview last?

The WITNESS. I should say until eleven o'clock; so late that the Secretary remarked that he must make his midnight visit to the White House, or some remark to that effect.

The CHAIRMAN. Was it then understood that you were to meet again in the morning?

The WITNESS. It was at his request that I returned in the morning.

The CHAIRMAN. At what time did you get there in the morning?

The WITNESS. I think it was about ten o'clock. We went on with the discussion of the merits. He asked me, I think, early in the morning talk to suggest what I wanted him to do at present. I said, "Mr. Secretary, it is almost nothing that I can ask you to do at present. We cannot go into court until we have a grievance. We have no grievance. Peru has not denied the Cochet claim, and we have no right to presume that she will deny it. And until we first submit the matter to the Peruvian Government, and give it an opportunity either to approve it or disapprove it, we have no right (it would be a discourtesy) to ask any other government, even our own government, to interfere. We are not, therefore, prepared to ask anything from the Government of the United States, except something merely provisional, in the present anarchical condition of affairs. We are advised that Chili is shipping our guano to Europe constantly, and pocketing the money, and that she wants to make a treaty with Peru by which she may take our guano in payment of the Peruvian war debt. Now, if the Secretary thinks it would be proper, we should be glad to have a notification sent from Washington to both Peru and Chili, that there is asserted an American title to that guano, and that whoever deals with it will please do so under notice of that assertion, so that they may not afterwards claim that they have taken it innocently." "Well," he said, "that is not asking much." "No," I replied, "Mr. Secretary, we would be very glad to ask more, but we do not see our way clear to ask anything more at present."

After this had been somewhat fully discussed, and it had been made clear to him that we were not asking the United States to approve of our claim, or to adopt our claim, or to assert our claim, or to commit itself in any way to it, or even to pass upon the validity of the claim (for I said to him with great explicitness, "We do not now submit this claim to the United States for an opinion on its validity, because if Peru admits it, that is an end of the question; and if Peru denies it, then we would be glad to have the aid of the United States to provide for an arbitration or some other proper tribunal to pass upon it"). After all this had been thoroughly discussed in its various branches and ramifications, and after there had been no room left for doubt in his mind as to what we wanted the United States to do, and what not to do at present, the conversation took some other turn, and finally was abruptly closed by the Secretary's remark that he had an engagement which he had forgotten, and that he must beg us to excuse him. He rose and said "Now, what is it, Mr. Shipherd, that you want me to do?" I said, "Mr. Secretary, I would like to have you notify Peru and Chili that there must not be any settlement made down there without due recognition of the fact that there is an assertion of American rights involved."

The Landrean claim having been practically adjudicated by the American Congress, I certainly indorsed it, and said that it seemed to me it should be accepted as a valid claim and provided for; although I told the Secretary at the time that we had no interest in that claim, but that I was merely speaking for it at the request of the attorneys for the owners; because ours, as a larger and prior lien, would practically overslaugh the Landrean claim. It seemed to me, I said, that the Landrean claim should be treated as *res adjudicata*, and that provision should be made for its payment; that provision should be made between Chili and Peru for the proper adjudication of the Cochet claim, first by Peru and, if not, otherwise; and that there should be a stay of proceedings suggested emphatically by the United States pending this condition of affairs. He responded instantly, so that his words were as an echo to my own, "That you shall get, sir, and I shall make it my first business; I go directly to the State Department." I think I give the committee his words verbatim.

The CHAIRMAN. I neglected to ask you whether any one else was present at that interview except yourself and the Secretary?

The WITNESS. The same Senator who was present the evening before; and Mr. Walker Blaine was present during the latter part of the interview.

The CHAIRMAN. I understood you to say that at some time during the interview this letter to Mr. Hurlbut was again referred to between you and the Secretary?

The WITNESS. The chairman misunderstood me. I said at a later interview, some weeks or months later. I had a number of interviews with the Secretary.

The CHAIRMAN. How long did this interview in the morning continue, and at what hour did it close?

The WITNESS. The interview occupied, as my recollection is, substantially the two hours between 10 o'clock and 12.

Mr. BLOUNT. You have told us your reasons for writing this letter of June 2 to Mr. Hurlbut. Was there any extraordinary reason for employing a United States Senator as attorney?

The WITNESS. I do not understand the drift of your question in that connection.

Mr. BLOUNT. Was there any reason for your employing him other than the fact that he was an attorney; or was the fact that he was a Senator an inducement for you to make the arrangement?

The WITNESS. I am very glad to have the question asked. I have never sought the assistance in any form or manner of any member of either house of Congress because he was a member of Congress. The reason for my employing a certain Senator as an attorney was frankly and unqualifiedly this: That I understood he was an intimate and personal friend of the Secretary of State. The fact that he was a Senator had never, so far as I know my own consciousness, any influence in the premises at all.

Mr. RICE. Had you been previously acquainted with this Senator?

The WITNESS. No, sir.

Mr. LORD. Had you any advice from counsel in preparing this letter of June 2, to Mr. Hurlbut, which you have described as an artistic letter?

The WITNESS. I should not say that I had any professional assistance in regard to the letter. My recollection is that I consulted with gentlemen who are lawyers; but I consulted them simply with reference to the fact or supposed fact of General Hurlbut's peculiar views about the fitness of things.

Mr. LORD. Did you consult your personal counsel in regard to the drafting of that letter?

The WITNESS. I had no person, I think, retained at that time as my counsel in relation to these interests. I think that I was acting alone as counsel for my clients. The Peruvian Company was not organized until the 1st of October. Prior to that time I acted simply as attorney for my personal clients, who were themselves owners of these claims; and while we acted with reference to a Peruvian company that was to be organized, there was no such organization in existence. Counsel was only brought in a short time before the organization of the company.

Mr. LORD. Did you consult that counsel in reference to this letter?

The WITNESS. No, sir.

The CHAIRMAN. You say that you had subsequent interviews with the Secretary of State?

The WITNESS. Yes.

The CHAIRMAN. State how many and when and where.

The WITNESS (referring to a memorandum-book). My best recollection and belief at present are that these subsequent interviews occurred on the dates that I am about to name. But as I did not preserve very formal data in reference to them it is possible that there may have been one or two additional interviews, or that these may vary 24 hours from the actual times. The dates are October 14, November 3, and November 5.

The CHAIRMAN. Where?

The WITNESS. On October 14 I had two interviews, one at the residence of the Secretary; and my present recollection is also that I had an interview with him on the

evening previous. Later, on the 14th, at his request, I met him at the State Department. The interview of November 5 was a very brief one, and occurred on the train on which we were both riding between here and New York.

The CHAIRMAN. The committee is instructed by the House in the following resolution, adopted March 16, 1882:

Resolved, That the Committee on Foreign Affairs be directed to demand from Jacob R. Shipherd, of New York, copies of all correspondence between himself and any person or persons whatsoever, and all papers and other evidence in his possession tending to show what said Shipherd did or attempted to do to enforce the claim of the Peruvian Company or to induce the United States to enforce this claim against Peru.

I am directed to give you a copy of the resolution [handing it to the witness] and to ask you whether you are prepared to comply with that demand.

The WITNESS. Can you not take it up to-morrow?

The CHAIRMAN. Yes; if you desire it.

The WITNESS. I admit the service of the demand and shall certainly comply with it, so far as I indicated in the first session; that is, so far as I consider myself at liberty to do so. There is no personal unwillingness whatever on my part. I will discuss the matter with the committee at its next session, making such suggestions as have been made to me by counsel on the subject.

Mr. BELMONT. In reference to your first interview with Mr. Hurlbut, you say he stated that the government was satisfied as to the validity of this claim. Did he suggest that it had been submitted for the opinion of the Attorney-General or to the Cabinet?

Mr. SHIPHERD. Nothing of the kind. My recollection is that the phrase was: "The President regards."

Adjourned until to-morrow.

WASHINGTON, D. C., March 22, 1882.

The testimony of Jacob R Shipherd was resumed as follows:

The witness presented and identified the letter, mentioned in his testimony yesterday, to the President, of April 28, 1881, as follows:

APRIL 28, 1881.

SIR: I have clients whose commercial interests in Peru are in the aggregate some hundreds of millions of dollars; so much larger than any total of Chilean war claims yet mentioned as to entitle my clients to respectful consideration in the discussion of any plans affecting the future of the prostrate republic.

In a few days I expect to be ready to submit to the President the facts in detail. Meanwhile I hear that new appointments of ministers to Santiago and Lima are likely to be made, and hence this anticipatory note, the sole purpose of which is to request that, if such new appointments are under consideration, a decision may be reserved until the facts I refer to shall have been laid before the President.

My clients have no desire to submit nominations or in any way to influence nominations as such; they only desire that the President may have an opportunity to select men—if new men are to go out—who in his judgment and in that of his constitutional advisers shall be well fitted for the special and responsible diplomatic representations which may be unavoidable in the premises.

An assurance that such reservation will be made would oblige us.

I have the honor to remain the President's very obedient servant,

JACOB R. SHIPHERD.

To the PRESIDENT.

The CHAIRMAN. Have you been able to find the letter of the 21st of May, which was missing yesterday?

The WITNESS. I have not. I have sent to my son, my confidential amanuensis, requesting him to prepare an additional copy and to forward it to me to-day without fail. If it arrive to-morrow I shall be able to testify, to the satisfaction of the committee, that it is a true copy. If not, I will on my return to New York personally verify it. My recollection is so fresh and full in the premises that I think I shall be able to satisfy the committee when the copy arrives.

The CHAIRMAN. The period gone over yesterday in the testimony was from May 21, 1881, to July 26, including the missing letter and the interviews of the witness with Mr. Hurlbut and the Secretary of State. Under the order of the committee I thought it best to preserve the chronological order, and to call on members of the committee this morning to put such questions as they desire to put in relation to the testimony of yesterday. In the absence of Mr. Orth, Mr. Kasson is the first on the list.

Mr. KASSON (to the witness). You testified yesterday in reference to your proposition to Mr. Hurlbut (by the letter which was read) of an interest to be at the disposal of himself or his friends of \$250,000 of stock. In that connection you stated that you did so in connection with the fact that you considered Mr. Hurlbut purchasable. Waiving the point whether your opinion is competent evidence, I wish to ask you, have you any personal knowledge of any instance in which Mr. Hurlbut's official action has been purchased?

The WITNESS. If the committee please, the statement which I made yesterday was not offered as evidence. It was not offered as an opinion. It was offered to disclose to the committee the motive which led to the writing of this letter—from within—that the committee itself, and for itself, might judge whether that motive tended to explain the real intent and meaning of that letter. The impression in my own mind was created by facts which were within my personal knowledge, which were pressed upon my personal attention many years since and at intervals thereafter. These facts I hope to be able to submit to the committee to-morrow morning in the form of a printed sheet, which was widely circulated and was brought to my notice at the time of its circulation—the date to which I referred yesterday. In connection with that I now call the attention of the committee to a decision of the United States Supreme Court, which will be found (if my notes are not inaccurate) in the 102d vol. U. S. Reports, p. 322, in a case entitled *Clark vs. The United States*, in which I understand the United States Supreme Court to determine judicially that General Hurlbut, while in military command at New Orleans, deliberately accepted an infamous bribe. I say all this in self-defense and merely to show that I was practically compelled to take notice of facts which are most notorious and public, and with the origination and qualification of which I have never had anything to do.

Mr. KASSON. Then I wish to ask you if, at any time in the course of your entire correspondence or connection with Mr. Hurlbut, while minister, he intimated to you directly or indirectly his desire for an interest in any claims that you represented?

The WITNESS. No, sir. I think I stated yesterday (and if not, I desire to state to-day) that nothing ever passed between General Hurlbut and myself touching any possible interest, present, contingent, or in any form, that might be reserved for himself, except what is specified in the letter which I wrote and for which he certainly had no responsibility.

Mr. KASSON. He never made answer directly or indirectly to that proposition of yours?

The WITNESS. No, sir. I never was aware that the letter had reached him until I learned it from the fact of his having forwarded it to the State Department many months later. I would be glad to say in that connection, emphatically, that General Hurlbut could not prevent my making him the proposition, infamous or otherwise; and for all that may have passed between himself and me which the committee in its deliberate judgment may deem improper, I alone am responsible, and it is all found in that letter.

Mr. KASSON. Did you at any period during this correspondence or negotiation make to any officer of the United States Government, either a diplomatic officer abroad or an officer of any department at Washington, any proposition to interest such officer in the claim, directly or indirectly, other than that which you made to Mr. Hurlbut?

The WITNESS. No, sir.

Mr. KASSON. Did any such officer ever intimate to you his desire to be interested in any way in the claims which you represent?

The WITNESS. No, sir.

Mr. KASSON. Nothing touching an interest, then, in either class of these officers has ever passed in the history of this transaction—nothing tending to express a desire on the one hand, or a proposition on the other, for an interest in the claim?

The WITNESS. Never, sir.

Mr. KASSON. Turning now to the claim itself. State all the old claims by name which are included within the claims which you represented to the government in this affair—for example, the Landreau claim, the Cochet claim, &c.—all the claims which you supposed you represented in connection with your company.

The WITNESS. The sole claim to which the Peruvian Company asserts, or has ever asserted, a title is the claim of Alexander Cochet as the original discoverer of guano. Individuals who are large stockholders of the Peruvian Company represent themselves to me to be also part owners of the claim known as the Landreau claim, and to have been such for many years; and, on account of the intimate relations which they personally sustain to me, they have requested me to have a general lookout on behalf of the Landreau claim. More than that, parties who claim to own the entire Landreau title (and their title is vouched to me by counsel among the most eminent in New York, who have personally examined it) some months since submitted to me a proposition to purchase, in behalf of the Peruvian Company, the entire Landreau interest, and approximate terms were agreed upon—my suggestion, however, being

that the matter should lie until the Cochet claim was first disposed of. If I understand the legal status of the Cochet claim, it comes in as a first lien, and practically takes everything. If, then, we should purchase the Landreau interest, we should, as first mortgagees, purchase a second lien with a view of equitably providing for the parties holding it. I have frankly disclosed to the committee, so far as I know, the exact relations which we sustain toward the Landreau interest, as possible prospective purchasers; but the Peruvian Company itself has not, and never has claimed to have, any interest in the Landreau claim.

Mr. KASSON. Do you know what company, or what individuals, now properly represent the Landreau claim?

The WITNESS. I suppose I do.

Mr. KASSON. Please to state it.

The WITNESS. I suppose that I cannot without violating private confidence.

Q. Is it held in America or abroad?—A. In America exclusively, and by American citizens exclusively.

Q. Are there counter claims to the whole or to any part of the claim known as the Cochet claim?—A. I know of none.

Q. The title of your company is an undisputed one?—A. So far as I have ever heard.

Q. What is the legal title of the company?—A. The Peruvian Company.

Q. Is it incorporated?—A. Yes.

Q. Under the laws of what State?—A. Of the State of Georgia.

Q. Give the date of the incorporation of the company.—A. In connection with my answer to that question I have brought with me, for the information of the committee, copies of the only printed statement in reference to the affairs of the Peruvian Company of which the committee is not already in possession. This paper has never been forwarded even to the State Department. Desiring to place every information at the command of the committee, I have brought a sufficient number of copies to supply each member, and this document will include my answer to the question. [The document is annexed to the testimony of the witness.] I have also brought an original copy of a translation of the old Spanish pamphlet referred to, and which, though printed in this volume, is a very important document. It includes the award on which our title rests.

Q. On what page of this pamphlet is the act of incorporation?—A. It begins on page 5.

Q. The entire act is not given here?—A. No, sir; it is not.

Q. The date of the act was 1870?—A. Yes; October 24.

Q. Is all the stock of this company held in the United States?—A. Every share of it, so far as I know.

Q. Has any money been paid in on the stock?—A. Yes.

Q. Can you state about how much?—A. No, sir.

Q. Or how much per share?—A. No, sir. I decline to state, simply because it is purely a private matter.

Q. From what parties did the company purchase the claim?—A. With all due respect to the committee, I decline to state.

Q. Have those parties who formerly owned the claim reserved any lien on this company, or claim against it for the purchase money?—A. None whatever.

Q. Is there any incumbrance on the stock or property of the Peruvian Company?—A. Not to my knowledge.

Q. Were the original claimants paid any part of the purchase money in stock of the new company?—A. I decline to state, with respect to the committee.

Q. Has any agent of the Peruvian Company taken possession of any property in Peru claimed to belong to the company?—A. No, sir.

Q. Has there been a resident representative of the company in Peru since the organization of the company?—A. I decline to state at present.

Q. Has the company formally notified the Government of Peru of its ownership of the Cochet claim?—A. It has; and the evidence in full will be found in this pamphlet on pages 9, 10, 11, and 12.

Q. Has the Government of Peru admitted the validity of the title of the Peruvian Company?—A. No response to the correspondence here published has been received.

Q. Has the Peruvian Government responded in any other way to the notification of the claim of this company?—A. Not officially—not at all as a government, of course.

Q. By reserving non-official correspondence, do you mean to reserve non-official correspondence from persons who are part of the Peruvian Government?—A. There has been no correspondence, official or semi-official, received by the Peruvian Company from the Peruvian Government. Whatever advices have been received in the premises have come from the private correspondents, agents, or representatives of the company.

Mr. KASSON. Perhaps you may feel the propriety of answering the questions in a different light, if I state briefly to you the object of the inquiries.

The WITNESS. Thank you, sir.

Mr. KASSON. We recognize (or at least I recognize, and I presume that we all do) the absolute right of any citizen of the United States, or incorporated company in the United States, to undertake a proper business in a foreign country—a speculative business, if you please, so that it is a legal undertaking. The allegation is made in this case that it is a special speculative attempt to involve the government in aid of a private speculation in distinction from a legitimate representation of a proper business claim of citizens of the United States. The object of my inquiries is to show whether or not this is a solid claim, and whether the company is an organization for the promotion of a legitimate undertaking. However profitable it may be to citizens of the United States, that is a fact which has nothing to do with it so long as it is a legitimate undertaking. It is alleged that the fact of its not being recognized by the Peruvian Government has led the company, as it has a right to do, to apply for the protection of its own government. With this explanation, I ask you to state as fully as you can whatever relates to the validity of this undertaking, to the solid character of the undertaking, and to your legal right as a citizen of the United States to demand the aid of your government against the Chilean Government. If you state in a condensed form the facts bearing on that, you will go far to enlighten this committee.

The WITNESS. The subject suggested in the question is one far too broad to be covered in an extempore manner at this moment. If the committee will indulge me, I will outline cursorily, and, I trust, definitely, the facts called for; and, with the permission of the committee, I will possibly supplement some points at a later date, although I am not here to advertise this corporation or to seek in any manner to inflict upon the committee anything like a comprehensive and wearisome account of it, or of its interests. This claim was brought to my attention as a practicing attorney in the strictly ordinary course of business, in March, 1881. Prior to that time I had never heard of it. I had no more knowledge of Peru than I had of Patagonia. I came into the case as utterly ignorant of the premises as perhaps any attorney in the United States could have come into it. This statement, once for all, will very easily, I think, dispose of the alarming accounts heretofore published about my having conspired with the government to set up the Calderon Government in Peru, to manipulate the appointment of ministers to go to South America, and all that sort of thing. I simply had no knowledge of the claim or of any of the affairs of Peru and Chili prior to March, 1881. After examining the case as an attorney, I was impressed with the opinion that it was about as manageable as an Egyptian pyramid, and I so reported to my client. I said, "The intrinsic value of the cut-stone in an Egyptian pyramid may be enormous, but the practical value of it is the value which may be ultimately realized out of it in dollars and cents, and whether it is likely to be more than is absorbed in any attempt to utilize it. Here is a claim which on the face of it I think no lawyer for a moment would hesitate to say must be absolutely valid, if the allegations in the papers are true—not only valid, but equitable in the highest conceivable degree. A more equitable claim I think never existed, and never can exist. But" (I said), "in the first place, there is the situation of war and anarchy. The republic which, you say, is your debtor is bankrupt absolutely, hopelessly bankrupt. It can do nothing for you if it would. It is under the feet of a victorious power which, if the laws of war are to prevail, has the absolute power to take what it pleases and to do with it what it pleases. If you brought me a title to part of the floor of the ocean, you could hardly bring me anything which, it seems to me, is farther out of reach at present. But" (I said), "there is something attractive about a billion of dollars. There may be an attractive power in this thing which will draw out from some quarter or other, possibly from several quarters, the means of utilizing it, and if you wish me to look into the possibilities of the case, I will do so."

The result of the negotiations, extending over many weeks and modified at various points, was ultimately to give me, professionally, "white paper" to see whether anything could be done with the claim. After that point then I alone am responsible for the policy which we pursued. I said to myself, "If I go to Washington and get down into the lap of the government in a manner to suggest to the Executive that I have come here to sit around until it is compelled to do something for me—if I approach the Executive in a spirit of that sort—I ought to be kicked out, and probably should be. It may be, abstractly, the duty of the United States Government to see that the rights of its citizens are protected abroad when the citizen himself is unable to protect them. But the United States Government has imposed upon it an infinity of other duties, and it will not be likely to precipitate the country into war or to undertake any complicated negotiations on such premises as these. Nothing of the kind is to be expected. We must put our own shoulders to the wheel before we call on Hercules, if we expect a Hercules to help us at all." With these views I shaped all my plans from the first, as suggested already, I think, in some correspondence that has been published, and as will come out very clearly in a letter which I shall have to submit. I shaped all my policy with reference to doing everything that could possibly be done in the way of negotiation or dicker on our own behalf, leaving a resort for asking for aid from the United States Government to the last extremity.

It occurred to me, further, that it would be exceedingly proper (since every step we must take, if it attracted notice, would attract a great deal of notice, and since our action as American citizens would in a sense be representative of the United States, and the government would be compelled either to approve it or disapprove it) that we should at least make the Executive promptly aware what our interests were, and place all the facts within the control of the Executive. We must not seem, on the other hand, to attempt to act independently of the government. The interest was necessarily international, and it was the right of the government to be at least informed on the subject. With this view, the first step that I took was to write the letter which the chairman has just read, shadowing to the President the fact that there was a large claim about to be brought forward, shadowing it to him at a time when I understood new appointments were under consideration, stating expressly, as I did, that we had no suggestion to make and no influence to offer in regard to the appointment of ministers to South America. From the first, we were judiciously careful to abstain from seeming to usurp any share in the functions of the government. We were citizens only, and no one was more thoroughly aware of the fact than we were. We desired that the President should make his selection of men who he might suppose were clean-handed, pure-hearted, broad-minded, and capable of fitly representing him in case he should at a later date connect himself with this claim.

Mr. KASSON. That is up to the date of the letter submitted this morning, April 28, 1831?

The WITNESS. Yes, sir. The first copies of my printed papers that left my hands were the set which were sent to the President on the 21st of May. I thought it not indelicate to suggest, inasmuch as I did not personally approach the President, and inasmuch as I asked no one to approach him in my behalf, but merely laid my case before him on its merits, that if it were convenient and possible I should be glad to be summoned to Washington to answer any questions he might ask. I was not summoned. I did nothing further until I learned of General Hurlbut's appointment. I had my own apprehensions in the premises; but the appointment had been made, and it was my duty to accept it. I communicated with the Secretary of State, first by inclosing to him a set of my papers for General Hurlbut, to be delivered in his official discretion. I then wrote the letter which has been read to General Hurlbut and suggested an informal conference. The sole thought that I had in mind with reference to that conference was that I should be glad to have a free talk with him personally in reference to this claim, to supplement, as I might be able, the official information and the official instructions which he might receive. It was not my purpose at that time to make any suggestion to him with reference to the matter which was suggested in my letter of June 2. I stated yesterday that when that question confronted me I had but one impression, and that was that it would not be wise to have any conversation with Mr. Hurlbut on the subject; that whatever should be said should be said in writing, so that there might be no mistake as to what was said. The conference with General Hurlbut followed; it seemed to me exceedingly satisfactory. My papers could not have been laid before the President, presumably, sooner than the 23d of May. They were mailed on the 21st, which was Saturday. Five days later the United States minister telegraphed me requesting an interview. At that interview he stated the conclusions and final opinion of the Executive of the United States on my claim—that it was as strong as a claim could well be made. I may have been an enthusiast, I may have been misled, but such a response to such a suggestion seemed to me as an attorney (and not altogether a visionary) a very satisfactory and encouraging response. I certainly had not bought that opinion; I had not influenced it; it had come on the merits of the case, as shown in the papers, if it came at all. I took no further steps (I was busy myself with interior details) until July.

The CHAIRMAN. I notice on page 549 of the printed volume that there are two letters from yourself to Mr. Hurlbut, and one letter on the succeeding page. I desire to inquire if these were all inclosed in one envelope or in different envelopes; they are all of the same date, June 2?

The WITNESS. My recollection is distinct that the first letter on page 549 (the dreadful letter) was inclosed in a separate envelope. My impression is that the second letter went in a separate envelope, but it may have been inclosed with the third some time in July (my negotiations with my clients for the transfer of their claims to a corporation having been satisfactorily advanced). I determined to associate with myself counsel of experience and eminence, with the sole view of receiving assistance in the sifting of all the legal questions which might be involved in the claim. I certainly was not unaware of the magnitude of the interests involved if the title was good. My impression was that it would be impossible to take too much care with reference to the one question of whether the title was good or not. With that view I opened correspondence with Mr. Boutwell in the first instance.

Mr. RICE. Had you been previously acquainted with Mr. Boutwell?

The WITNESS. I had not been. My attention was turned towards him by the fact

that he was at the moment (as I believe he still is) counsel for the United States in the French and American Claims Commission, and it seemed to me that he would be freshly and fully informed as to all the questions of international law that would be likely to affect this issue. I will add that that was the controlling consideration, and I believe the sole consideration, which turned my attention toward him. His political affiliations at the time, his personal relations to the government, were simply unknown to me. He was selected solely as a counselor who, at the moment, would be likely to be very freshly and fully informed on international law as bearing on claims of this sort. He was kind enough to examine the case, retaining the papers for several weeks. He then came to my office at the end of a journey made expressly to see me, introducing himself. The conversation was about like this (he opening it): "Well, sir, I have examined your case." There was a long pause. "Well, governor, what do you think of it?" "It is all right." "You find no flaw in it?" "None, sir." "Are you entirely satisfied with it?" "Entirely, sir. And I am ready to submit it to the President at any moment." The remainder of the conversation I think I shall not disclose. It is in no sense material to the history which I am now giving. It lasted, perhaps, an hour and a half. It concerned itself exclusively with such matters as would naturally pass between counsel and client at the time, and my suggestion with reference to the expediency of using or omitting to use certain counsel. Neither at that conference nor at any other that I ever had with Mr. Boutwell was anything said with reference to the possible use of any officer of the United States or any member of Congress in his official capacity. I trust that Mr. Boutwell would have retired from the case instantly if I had suggested anything of the kind, and I certainly never expected him to suggest anything of the kind. So far as the purposes of this investigation are concerned, as I understand them, I have disclosed unreservedly all that passed even between this counsel and myself on that subject.

The CHAIRMAN. Without desiring to interrupt you, we will now return to the examination. I think that the purpose this morning was to give the various members of the committee an opportunity to examine you with reference to the subject-matter of yesterday.

Mr. RICE. Does not this come right within the line of the examination of yesterday?

The CHAIRMAN. I think so, so far.

Mr. RICE. And it is covering a great many questions?

Mr. KASSON. That was my object.

The CHAIRMAN. So far as the history and origin of this claim and the relations of persons to it are concerned, I think that it does come logically and naturally in the line of yesterday's examination.

Mr. KASSON (to the witness). Please proceed.

Mr. BELMONT. Can you state the conversation with Mr. Boutwell?

The WITNESS. I have stated it so far as I think proper to do so, or so far as it can be of any service to the committee touching the *quasi* issue which the committee is investigating.

Mr. BELMONT. I do not wish to interrupt the line of the examination, but I would like to understand what objection there can be to the witness stating what the conversation was between himself and Mr. Boutwell.

The WITNESS. The suggestion I have already made, I think, will cover that ground. I conferred with Mr. Boutwell specifically with reference to the expediency of pursuing negotiations with the Executive, which had been initiated by my correspondence as heretofore shown. The President meanwhile had been injured. He was disabled. The very important query arose whether the Secretary of State would consider himself sufficiently informed in the premises to proceed without being able to consult the President. That ground was very carefully gone over. The only decision we could reach was that that must be left to the Secretary of State himself to decide. The further question was disclosed as to just how the Secretary of State should be approached. My own suggestion was that the approach should be made by Governor Boutwell; that he was counsel for the United States; that the Secretary of State was in such relations to him that he could at any time have proper access to him; and I asked him to undertake this office. But a few days before his call, a friend had brought to my attention the fact that a person, whom I will not now name—a Senator of the United States—was a particular personal friend of the Secretary of State, and would be able as counsel to secure an advantageous consideration of the case on its merits. I had authorized steps to be taken, and there was a chain of steps taken, the result of which should bring me into conference with this Senator. That conference was imminent on the day when Mr. Boutwell and I had this consultation.

Mr. KASSON. State about the date, if you please.

The WITNESS. I should think it was midway in July.

Mr. ORTH. It was after the 2d of July?

The WITNESS. Oh, after the 2d of July. I disclosed to Mr. Boutwell frankly this pending negotiation, and he said, "I think it might be just as well, perhaps better, to pursue that course. I am at your service in the premises whenever you think I can

act with advantage, but my advice would be that the initial overture should be made by some personal friend of the Secretary. He is necessarily exceedingly pressed with official and personal duties, and whether he would give the matter attention at all or not may depend very much upon his courtesy to a personal friend." Upon that advice the interview in due course came about. That interview was confined (it lasted about four hours and a half) exclusively to discussion of the merits of the case.

Mr. RICE. The interview with whom?

The WITNESS. With the Senator. It was confined exclusively to a discussion of the merits of this title as a title.

Mr. RICE. Where was it?

The WITNESS. At my office, in New York. Toward the close of the interview I asked the Senator if he was willing to accept a retainer as counsel. He responded almost with vehemence, "No, sir; under no conceivable circumstances. It is possible that some form of this case may come before Congress, and you need no suggestion from me that, however innocent the intent, it would be impossible for me to be counsel under such circumstances. But I do not need to be retained. The grandest opportunity that was ever afforded to a nation in the history of the world is open to the United States through such a combination of facts as now exist, and as you have disclosed. The Secretary of State and the President, when he recovers (at that time he was hopeful of his recovery), will not require urging to see what an opportunity for civilization, for commerce, for the practical extension of our territory (apart from all political complications) is open here." He summed it up by saying, "This amounts to the commercial annexation of South America. All this will appear on the mere facts. You will need no political influence, you will need no urging, you will need no counsel. It is merely necessary that the facts should be clearly laid before the Executive."

The CHAIRMAN. Have you any objection in this connection to give the name of the Senator now?

The WITNESS. If the committee please, I would like to reserve it. It is simply a matter of courtesy.

Mr. BELMONT. Did this other Senator, whom you do not think proper at present to name, take the same view of the case as Governor Boutwell?

Mr. KASSON suggested that he wished to pursue his examination in regular order, and did not wish to have it broken into.

After some discussion, the witness was directed to proceed with his statement.

The WITNESS. Towards the close of the interview, the Senator, having freshly assured me that his judgment as to the interest of the whole United States in this case (it was thus he phrased it), would impose upon him as a Senator the official duty of forwarding a legal inquiry into the validity of this claim, and of engaging the Executive to take such proper action in the premises as might seem expedient, said that he would be glad to have me meet the Secretary of State; that he was on his way to Washington (having come from his home in Plymouth, N. H.); and that soon after his arrival he would ascertain whether the Secretary's duties were such, and whether his engagements were such, that it would be possible for him to take up the consideration of this case at that time; if so, he would advise me, and if I received from him an invitation to come to Washington, I might rely on the interview having been arranged for. Some days later I received from him either a telegram or a note, the substance of which simply was a bidding me to come to Washington. I came; I met him, and was by him conducted to the Secretary's where the interview of which I have given an account took place. Collaterally I had been, a short time prior to that time, initiating some negotiations to retain other counsel; but I think I have given an account of all the professional arrangements that were concluded up to that time. Of the others I will give due account at a later time.

Mr. KASSON. How did your company come into the possession of this Georgia charter which was granted in 1870, and at what time?

The WITNESS. As the attorney in the premises, it seemed to me expedient that we should secure for this company a special charter, something more than the sea-room which we were able to find under the general law. With reference to that I began early (possibly as early as May, 1881) to make inquiries in regard to special charters, and in the ordinary course of correspondence, I may say, I stumbled upon this charter. It was brought to my attention by an attorney of excellent standing in Georgia, who has been for several terms a member of the State legislature, and who was recommended to me I think by the secretary of state of Georgia. The information merely came in reply to such a correspondence as an attorney institutes in such premises—taking soundings here and there, going from one to another as one goes house-hunting. I learned of this charter. I learned that it had been originally drawn by Mr. Duff Green, who was, I think, in former years a very prominent man in Georgia; and that he had prepared it in reference to a very comprehensive scheme which he had for building railroads and canals, and other works of public improvement; all through the Southwest. It was explained to me that his intention was to have very extensive

European connections, and to do business more or less largely abroad, and that with reference to that he had a special clause inserted giving authority to the company to do business in all parts of the world.

These features of the charter at least seemed to me particularly fortunate for our use. It was explained that the charter had been granted him (although it has most extraordinary powers) by the legislature of Georgia, largely as a personal compliment to himself as a public man who was well known to them, and any reasonable request from whom would be cheerfully granted. I was further informed that after the initial organization he had died without going far with his plans, and that the charter then belonged to his legal representatives. For reasons purely professional, which I need not enter upon, I decided to make this use of it. The charter has the extraordinary provision authorizing the company to create branches at its pleasure, within or without the State of Georgia, in Europe or elsewhere. Each branch, while legally a branch only of the parent and not separable from it, was to exercise independently through its own shareholders, directors, and officers all the powers of the original corporation. I determined, therefore, with the approval of my associates and clients to make use of it in this way: having purchased the original charter, to procure from the original company a charter to the Peruvian Company, which would give us exactly the name we wanted; which would enable us to start absolutely *de novo*; which would relieve such stockholders from any apprehension as to the possibilities overhanging them, because under the charter no branch is responsible for any act of the parent society. The charter of the Peruvian Company, therefore, is merely a certificate from the Contractors' Association (the name under which this charter was granted) authorizing certain parties to become the corporate branch of the Contractors' Association under the name and style of the Peruvian Company. I will furnish, if desired, a complete text of both charters.

MR. KASSON. That is the incorporation under which you are acting as the Peruvian Company?

THE WITNESS. Yes.

MR. KASSON. The Peruvian Company is nothing more than one of those branches authorized under this Georgia charter.

THE WITNESS. That is all.

MR. KASSON. Were shares subscribed in the usual way, and the organization effected according to the terms of the act?

THE WITNESS. Yes; under advice of counsel.

MR. KASSON. Where is the official legal seat of this Peruvian Company organization?

THE WITNESS. At the city of New York. The organization was perfected under the professional advice of the Hon. Scott Lord, formerly member of the House, who will, I have no doubt, be at the service of the committee, to give the general results at least of his examination, advice, and co-operation in the premises.

MR. KASSON. A remark was made in your previous examination that you had been cautioned to be careful about mentioning the names of members of Congress. I want to ask you if that caution came first from any member of this committee?

THE WITNESS. The question gives me an opportunity to define exactly what I wanted to say. The advice given me was given by counsel as counsel, and was simply to this effect: Prerogatives of each house of Congress, and generally of any house of a legislative body, and the privileges and courtesies of each house, are such that neither house has a right to inquire, in *quasi* judicial manner, as to the conduct of a member of the other house; "and, inasmuch as you are now testifying before a committee of the House of Representatives, in regard to allegations of possible improprieties, you will be wise if you are careful in making any reference to acts of members of the Senate while testifying before the House committee" (that was the limitation); "first, because if members of the Senate have been guilty of any impropriety, the House committee will not desire to inquire, and has no right to inquire, into these improprieties; and, second, as you are somewhat freely placing at the disposal of the committee a mass of facts that the committee may judge whether these facts involve any improprieties, you will do well to observe a general reticence as to what members of the Senate may have done." That is the limitation.

MR. KASSON. Is that all that you meant?

THE WITNESS. That is all I meant, all that I was advised, and all that I desired to do.

MR. KASSON. I wish to say for myself, and I think I may say it for every member of the committee, that we regard you perfectly free whenever the name of a member of the House of Representatives is necessary to be mentioned, in the pursuit of this inquiry, to state it.

THE WITNESS. Thank you, sir. I had intended to make no reservation with regard to members of the House of Representatives, and no reservation as to the acts of Senators, when summoned before the Senate committee.

Mr. KASSON. The intimation to which you refer did not come from any member of this committee, or from any member of Congress?

The WITNESS. Oh, no, sir; it came from private counsel, and was given merely as legal advice.

Mr. KASSON. Have you had any communication touching the intervention of the United States Government in this matter with any other minister of the United States in foreign countries except Mr. Hurlbut, minister to Peru?

The WITNESS. The committee is already in possession of a letter, printed somewhere in this volume, which I wrote to General Kilpatrick. In that connection (perhaps as well there as anywhere else), I will supply to the committee another letter which I wrote to General Kilpatrick, which has not been published; and I will then answer that these two letters cover all the negotiations which I have had, to the best of my present recollection and belief, with any officer of the United States touching a possible intervention.

The letter last referred to was presented by the witness and read, as follows:

JUNE 9, 1881.

Hon. JUDSON KILPATRICK,

United States Minister to Chili, Newton, N. J. :

DEAR SIR: I inclose private copies of the prospectus of the Peruvian Company, and supplementary memoranda, for your information.

These papers were placed before the President on the 22d ultimo, and I have been officially advised in the premises through General Hurlbut.

I should be glad, at your earliest convenience, to discuss the matter informally and unofficially with you, as I have already discussed it with General Hurlbut.

No action will be taken by the owners of this claim except upon the express or assured approval of the Executive; and I trust, therefore, that you will see no impropriety in such a conference as I have suggested.

Be good enough to reserve these papers to your individual control for the time being, and oblige,

Yours, very truly,

JACOB R. SHIPHERD.

Mr. Shipherd to Mr. Kilpatrick.

THE PERUVIAN COMPANY,

10 Spruce Street, New York, October 19, 1881.

SIR: I have the honor to inclose herewith official printed copies of communications on behalf of this company to the minister of Peru and Chili at Washington.

Duplicates of these inclosures were filed in the Department of State on the 11th instant, and the originals were personally delivered by Ex-Secretary Boutwell, our counsel at Washington, on the 13th.

I place these copies in your hands, of course, without comment, and only for your early information. I have reason to suppose that you will receive instructions concerning the interests involved at an early day.

It may be proper to add that this company is now fully organized, with a capital of \$250,000,000; that it includes the best legal, diplomatic, and money resources of the United States; that the title upon which it relies is approved unanimously by a large staff of eminent counsel, and that it has unqualified assurance of ample governmental backing. It has called for the property, and you may safely rely that it has at command every means of enforcing that call. I send you a recent copy of the Times, which does but reflect the average public sentiment here. All the papers (preliminary) in the case I sent to your address in this city before you sailed.

We are prepared to treat Chili fairly, even liberally, but only on condition that she recognizes our superior rights. If she raises an issue she will simply get nothing. Right must rule.

Your obedient servant,

JACOB R. SHIPHERD.

Hon. JUDSON KILPATRICK,

United States Minister, Santiago.

Mr. KASSON. You say that these two letters to General Kilpatrick, and what you have stated in regard to General Hurlbut, constitute absolutely all the correspondence which you have had with ministers of the United States in foreign countries?

The WITNESS. The only persons with whom I have communicated are General Hurlbut, General Kilpatrick, the Secretary of State, and the President.

Mr. KASSON. That further correspondence with General Hurlbut is of a later date than July?

The WITNESS. Yes; most of it is. It will come right along in course, beginning

where we left off in the examination yesterday. I think I should upon this point say (since I have begun a statement with reference to a Senator) what will complete the history of that Senator's relation to this case, inasmuch as there is more or less interest in those relations. If the committee concur in that view, I will in a very few words give the entire history of that Senator's professional relation to this case. I have stated that he declined a retainer, and I have stated the reason that he gave. I state, further, that at a subsequent date (weeks afterward), and after what he told me was a very careful consultation with many eminent friends of his, in and out of Congress, he being advised that the chances of this interest ever coming before Congress were infinitely remote, and being advised, as he told me, by the Secretary of State, that under no circumstances would this case ever come before Congress, as it would be disposed of in the State Department—on that view, and on that advice given by the Secretary of State, he concurred in what members of the Senate, and also members of the House, had suggested to him, and did accept a retainer. Under that retainer he performed professional services for this company for some months. Several weeks prior to the meeting of Congress he advised me that the possibilities were that the case would come before Congress in some form, and that pursuant to his original view of the proprieties he had no choice but to return his retainer in full, reserving not even his disbursements. He had been traveling for me all summer, and had done four weeks of work; and he returned his retainer, renouncing all claims on the company in future, in a formal document. That is the entire history of his relation to the case professionally.

Mr. KASSON. It was during the recess that the negotiations and correspondence to which you have testified in connection with him occurred?

The WITNESS. Entirely.

Mr. KASSON. I do not ask you for his name, under the general understanding which we have had, although your testimony has given sufficient indications as to his identity. I leave it discretionary with you to state or not, as you think proper.

The WITNESS. I prefer to defer stating it, simply for the present.

Mr. ORTH. The witness has given the residence of the Senator, his town and State.

Mr. KASSON. Neither personally nor in writing have you made propositions to any representative of the United States abroad on the subject of the claim of the Peruvian Company except the two ministers you have named, Mr. Hurlbut and Mr. Kilpatrick?

The WITNESS. I will add (to cover any possible contingency) this statement: Some time in the summer I learned that Mr. Adams, the minister to Bolivia, was in this country. As disclosed in some document that is printed here, it was part of our plan to open commercial negotiations with Bolivia with reference to the possible lease of her nitrate beds. I had a personal conference on that subject with Mr. Adams at New York, a general conversation as to the possibility of Bolivia entertaining a commercial proposition of that kind. I think he expressed the general opinion that whenever we reached such a stage as that it would be in our judgment expedient to submit a proposition of that kind it might be favorably entertained. Beyond that general question and general answer, nothing passed between us, unless I gave him (and I think I did give him) a copy of a draft of a proposed agreement. The whole thing, however, was purely tentative.

Mr. KASSON. A proposed agreement with the Government of Bolivia?

The WITNESS. Yes. It had no other connection with this claim than as a possible annex which we might come to at some future time. I did not solicit Mr. Adams's influence or co-operation in reference to this claim, but as he happened to be in this country, I thought I would ask him that question.

Mr. KASSON. It was in reference to a new subject?

The WITNESS. An entirely new subject—a commercial relation which I thought might be made between this country and Bolivia. It involved no diplomatic influence in any shape or form, nor did it call for any official action.

Mr. KASSON. Was there any consequence from that inquiry or conversation with Mr. Adams later on?

The WITNESS. None whatever.

Mr. KASSON. You had no subsequent correspondence on the subject with him?

The WITNESS. If the committee desire, I can produce the correspondence that I had with Mr. Adams. The gist of it, I think, was this: First, a letter from me to Mr. Adams at Washington inquiring when he would be in New York, and when I could see him; second, a response from him saying that he would be in New York on or about a certain date; third, his calling to my office pursuant to that; fourth, a letter from him, I think, saying that he would sail on a certain day, and that he would like to see me before he sailed; and, finally, a conference of perhaps five minutes at the Fifth Avenue Hotel the day before he sailed. I think that at that time I gave him this suggestive draft of a possible agreement.

Mr. KASSON. Did he afterwards notify you of any action?

The WITNESS. I never heard from him since. That was the end of it.

Mr. KASSON. You made no proposition to him, nor he to you, touching any interest to him in connection with it?

The WITNESS. Oh, no, sir.

Mr. KASSON. The resolution of the House directs us to inquire touching the interest or conduct, in connection with this affair, of any minister of the United States abroad. Have you now disclosed the names of all such ministers with whom you have had correspondence or personal negotiations or interviews?

The WITNESS. To the uttermost of my knowledge or recollection. I feel embarrassed at this moment, in view of the terms of the resolution, for not having produced the correspondence with Mr. Adams, and not having mentioned it until now. I did not do so, because it seemed to me to have no possible bearing upon this question, as it did not touch this claim. I should be very sorry to have the committee think that there was any possible willingness on my part to make a reservation. The only correspondence I have had with foreign ministers regarding this claim was with Mr. Hurlbut and Kilpatrick. This supplementary matter, as a matter of fact, lying entirely outside and not involving diplomatic action under any circumstances, I had not supposed to be covered by the resolution.

Mr. KASSON. The resolution says "touching any improper connection with private interests."

The WITNESS. There never was any proposal to Mr. Adams connected with the Peruvian Company to do anything for it.

Mr. KASSON. In view of the death of Mr. Kilpatrick, and to avoid any suggestion even of impropriety on his part, I wish you to state distinctly whether in any of your correspondence or interviews with him there was anything said relating to any personal interests on his part in connection with the subject presented to him?

The WITNESS. I can answer that by saying that Mr. Kilpatrick never replied to either of my letters, that I never saw him to know him that I never sent him a verbal message, and that the two letters, the one which has been printed and the one which I produced to-day, represent the simple totality of all that ever passed between Mr. Kilpatrick and myself.

Mr. KASSON. As to Mr. Adams, you have already testified that there was no suggestion or proposition for his having a personal interest in the matter brought to his consideration?

The WITNESS. Not at all.

Mr. KASSON. As to Mr. Hurlbut, you testify that your proposition, which is in print, was never accepted by him, and that he never asked you that he should be interested, directly or indirectly, personally, in the prosecution of this claim?

The WITNESS. That is the truth, sir.

Mr. KASSON. And that letter of June 2 is the entire correspondence between you on that subject?

The WITNESS. Yes; and for that I alone am responsible.

Mr. KASSON. You further testify that no other diplomatic representative of the United States in any country has had any correspondence with you on this subject?

The WITNESS. I do.

Mr. KASSON. Do you also testify that no official of the executive department at Washington or elsewhere solicited an interest in this claim, received an interest in this claim, or had a proposition from you to be interested in it? What is your answer to that question?

The WITNESS. My answer to that is that no official of the United States Government (broadening that definition so as to include all members of Congress, and, so far as I know, all persons holding any position of trust in the United States Government here or elsewhere, in any form) has had any personal relation with this company from which he could derive any pecuniary advantage whatever, except one person who holds an office through which (so far as I know) he never could, by any possibility, by any official action, influence this claim, who was retained as counsel, he being a counselor at law, and who received a retainer as such counsel for legal services only. That gentleman is the collector of customs at New York.

Mr. KASSON. Give his full name.

The WITNESS. William H. Robertson.

Mr. KASSON. With that reservation, you answer, completely and absolutely, touching any personal interest in this claim on behalf of members of the government at home or abroad?

The WITNESS. I do; with the reservation simply that if any person who is interested in this company holds a government office, the fact has not been brought to my knowledge, and I therefore am not responsible for any negotiation with him in regard to his being an officer of the government.

Adjourned until to-morrow.

WASHINGTON, D. C., *March 23, 1882.*

The examination of Jacob R. Shipherd was resumed as follows:

The WITNESS. If the chairman please, midway of the hearing yesterday I was puzzled by what seemed to me a most causeless outbreak of levity; but when I read in the evening papers that the unnamed Senator lives in New Hampshire, and then for the first time became aware of an utterance which must have been unconsciously made, I joined heartily, though rather late, in the general laugh.

In view of the printed record, the committee, and the public as well, have, of course, understood the fact from the first, and I may as well now as later waive a merely technical formality and let it go into the record that the Senator concerning whom I have testified is identical with the Senator named in my printed letters, and is the Hon. Henry W. Blair, of New Hampshire.

At this point I may as well add that no other member of Congress has acted as counsel for me, and that, so far as I now remember, no suggestion of a retainer has been made to any other, with one exception. In that other case the overture was at first entertained, but finally declined upon the sole ground, as I understood it, that the interests involved might, in some form, come before Congress.

The CHAIRMAN. Are you at liberty to state who the other member was?

The WITNESS. It seems to me, if the chair please, that as nothing whatever came of the overture, it would be scarcely delicate for me to disclose the name. I will merely say that the gentleman will, of course, recognize himself, and will, if he wish me to disclose the facts, suggest that I disclose them. In that event, so far as I am concerned, I will cheerfully do so.

Mr. ORTH. The overture, was it from him or from you?

The WITNESS. From me. At first he entertained it, but subsequently declined on the sole ground that the matter might come before Congress.

The CHAIRMAN. Are you free to state of which house he is a member?

The WITNESS. I doubt the expediency of that, Mr. Chairman. It is a mere matter of delicacy that influences me. I wish to treat all members with courtesy.

The CHAIRMAN. I merely ask the question in order that the committee may recognize whether the matter comes within the line of its examination.

The WITNESS. I appreciate that, and yet it seems to me that, as I have stated the substance of the total fact, and as it involved practically no action except a declinatory one on his part, the committee, I hardly think, would care to pursue the investigation farther. It would do so in no case if I should happen to state that this was a Senator, not a member of the House; but that, of course, would narrow the field of guess-work, and perhaps annoy the gentleman in question.

Mr. RICE. It would certainly absolve the committee from following it any farther if you should state that he is a Senator; but if you should state that he is a member of the House, it is quite possible that our judgment might be different from yours in regard to the propriety of pursuing the investigation any farther.

The WITNESS. I shall be very glad to be advised by the committee in the premises. I have disclosed all the facts which it seems to me proper to volunteer.

Mr. BELMONT. In what shape did that gentleman suppose that the matter would come before Congress? Did he refer to an investigation which Congress might undertake?

The WITNESS. There was no suggestion of that sort. The suggestion was substantially in this form: "It is possible that I may be called to sit as a member of Congress in judgment on some interest involved here, and in such case, of course, I could not be committed in any way as counsel." The only ground on which a retainer was tendered was, of course, that it was only on the unqualified assumption that this matter would be disposed of in the executive department. That was the only ground on which any suggestion to a member of Congress has been made or could be made.

The CHAIRMAN. Mr. Shipherd has stated that his condition of health this morning is such that he intends to ask a postponement of the examination to-day; and I was about to suggest that, should that request be granted, the committee can, in the mean time, consider the propriety of proceeding farther with this inquiry. I will, however, subject myself to the wish of the committee in regard to that.

Mr. BLOUNT (to the witness). You employed Mr. Blair, as you stated, because of his personal relations to the Secretary of State, and of the facilities which those relations gave you in getting an opportunity to present your matter to the Secretary of State. What was the motive for your engaging the legal services of this other gentleman? Was it on account of his political relations to the executive department, or was it simply for his legal ability?

The WITNESS. If the committee please, I would like to reserve an answer to that question until the committee first decide whether it will go into this matter. If the committee go into it, I am prepared to go along as far as I am led. It seems to me

that if I answer the question, the way is open at once for an indefinite series of questions, and the decision of the committee in the premises is practically foreclosed.

Mr. ORTH. I understand that Mr. Shipherd has requested to be relieved from examination to-day on account of illness. It is better to decide upon that before we go into any further examination. If we do go into a further examination, I suggest that we adhere to the rules adopted by the committee.

Mr. BLOUNT. The question which I have put to the witness is certainly not going beyond the bounds which we have been heretofore observing in the examination. The question has been quite general as to members of Congress or Senators. If any member of the committee, however, wishes to have the question postponed, I am willing.

Mr. RICE. I think it will open up so long a discussion, that, if Mr. Shipherd is so unwell this morning as to require a postponement, it would perhaps be hardly fair to enter upon this subject. I have several questions which I want to ask on this point; and, if we are going into it, I think it quite likely that it will occupy some time.

Mr. BLOUNT. I did not propose to go into the general subject at all; but the witness has made a statement as to a single member of Congress.

Mr. RICE. If he says that that member of Congress was a member of the House of Representatives, then we can pursue that subject.

Mr. BLOUNT. I did not ask that question. I simply asked the witness what inducement had he for seeking an arrangement with this member of Congress—whether it was on account of his intimacy with the Secretary of State (as in the case of Mr. Blair), or whether it was purely to obtain legal advice.

Mr. ORTH. Will not that lead to a prolonged examination?

Mr. BLOUNT. I take for granted that the answer will be very simple. But if the committee wish to stop here on account of the sickness of the witness, I am perfectly willing.

The CHAIRMAN. I understand that Mr. Blount desires to pursue the matter only for a moment.

Mr. BLOUNT. That is all. I have only a simple question to ask, and I think the answer will be very brief. I do not propose to follow it just now.

The CHAIRMAN. I think the committee is disposed to let the question be put, but not with a view of going into any extended examination now.

Mr. BLOUNT. Not at all, sir. (To the witness.) I renew the question: What was the inducement for you to seek the services of this member of Congress who declined employment? Was it on account of his supposed influence with the executive department, or was it purely in order to get his legal advice as a lawyer?

The WITNESS. It was for reasons purely personal to the Senator himself (correcting himself) to the member himself—as distinguished from any aid which he might render, or was expected to render, in any event as a member of Congress.

Mr. BLOUNT. I do not understand you. What do you mean as personal to the member himself?

The WITNESS. I mean this, if the Chair please: that I am advised by counsel that my duty to gentlemen with whom I deal exclusively in their private capacity requires that I should not unnecessarily discuss any occurrence to which they and I may have been parties. I therefore stop at that line. I did not seek the co-operation of this gentleman because he was a member of Congress, nor with reference to any action which he might possibly take as a member of Congress.

Mr. BLOUNT. Nor as an attorney purely?

The WITNESS. I do not think it necessary, with all respect to the committee, that I should define what motives may have influenced me, further than I have already defined them.

Mr. BLOUNT. In view of what has been said in reference to the sickness of the witness, I will not press the matter now; but I certainly will hereafter.

Mr. RICE. I think the witness had better take into consideration very carefully, between this and to-morrow morning, whether he will not answer the question whether the member to whom he refers was a member of the House or not. If he makes the statement that he was a member of the Senate, that terminates our investigation in that direction. But if he answers that he was a member of the House, then it is for the committee to decide what further investigation it may be our duty to make within the scope of the resolution under which we are acting. I therefore suggest to the witness that he had better consider very carefully between this and to-morrow morning whether he will not answer that question.

Mr. BLOUNT. Lest there might be some misunderstanding, I do not wish to be committed to the proposition that we may not inquire as to the action of a Senator. I do not care just now to give my reasons, but there is an aspect of the question in which I think Mr. Rice will concur with me in the idea that we can inquire into the action of Senators.

Mr. RICE. I will be very happy to concur with my friend Mr. Blount, but I will modify the statement which I made, if I made it positively in regard to Senators; I

did not intend to do so; but on the other hand, I do make this statement positively, that if it refers to a member of the House, it is clearly our duty to follow it.

The CHAIRMAN (to the witness). You handed to me a few moments ago the copy of a letter purporting to be that of the letter of May 21, 1881, the abstract of which is set forth in the printed document. This copy, however, shows that the letter was dated May 20, 1881. Will you first state how you obtained this copy, and whether it is a genuine copy or not?

The WITNESS. The day before yesterday I wrote to my son requesting him to make me a fresh copy of that letter. He had assisted in the preparation of all the copies which I brought here. He is a person 22 years of age, and entirely competent to take steps with reasonable care. He sends me this copy with a note saying that he has himself compared it word by word with the letter-press copy of the letter. I have myself read it, and my recollection being refreshed by the reading, and having thus disclosed to the committee all the means I have for speaking of its absolute accuracy, I am prepared to state that to the best of my knowledge and belief this is a true and full copy of the letter abstracted as of May 21. My recollection in regard to the date is this: that I prepared the letter on the 20th of May, intending to inclose with it printed documents; that my printer disappointed me, the documents not coming until Saturday morning, the 21st, and that the letter was forwarded on that date. That date has been in my own mind, and, by some way or other, which I cannot account for, that seems to have been taken as the date in the State Department.

The CHAIRMAN. Have you ascertained any facts in reference to the missing copy which you supposed you had brought with you?

The WITNESS. I have not.

The CHAIRMAN. What search for it have you made?

The WITNESS. I have repeated at my rooms an exhaustive search of every paper which I had with me. I can give no account of the matter, except that I prepared a list of the dates in my office, and as the clerk brought in one copy after another I checked them off. I have that checked list with me, at least so far as the missing letters are concerned, and it shows that this letter was checked off. That corresponds with my recollection that the letter was brought in and compared along with the others in due course, and, as I supposed, put in the bundle.

The CHAIRMAN. Do you think that this is the copy which was then prepared?

The WITNESS. It is not. I am confident that that is a new copy, because the correspondence with my son discloses that. It is the copy which he made yesterday and sent under express regulations to my address.

The CHAIRMAN. And the other copy you think you compared with the clerk by the letter-book?

The WITNESS. My recollection is this, that I went through the list point by point, and compared every copy myself; I can give no further account of the matter.

The CHAIRMAN. Did you at that time, or at any previous time, notice the discrepancy in the date between the 20th and the 21st of May?

The WITNESS. I do not think that I noticed it at the time that I compared it. That can be accounted for because my custom has been for many years to compare papers mechanically. But my recollection of the facts arose the moment that my eye fell, in the first reading of the copy, on this date. I remembered distinctly the fact that I wrote the letter on Friday; that my printer, as usual, disappointed me, and that I mailed it the next morning.

Mr. RICE. The committee will require you to verify this copy.

The WITNESS. I will do so at the first moment I am in New York.

The letter was read by the clerk, as follows:

May 20, 1881.

SIR: I inclose herewith the first copies given out of:

1st. The prospectus of the Peruvian Company.

2d. Draft memorandum for agreement with Peru.

3d. Ditto account sinking fund script.

4th. Ditto claim of title—pursuant to the intimation in my letter of the 28th ultimo (sic).

The Peruvian Government having now no diplomatic agent in this country, I have been in free consultation with the senior representative, Mr. T. F. Tracy, the consul in this city. Mr. Tracy is the son of an American merchant, formerly resident at Lima and married to a Peruvian lady, and was born and bred in Peru. For something like twenty-five years he has held his present post, and seems to be very intelligent as to both Peruvian and Chilean affairs, and certainly is keenly alive to Peruvian interests.

As to the Cochet claim, he says that it is little known to the present generation, having disappeared from contest in 1853, when Cochet returned finally to France, and being almost immediately succeeded by the Landreau claim; but that no disposition to contest it is probable when presented, as we are now ready to present it, since we shall come to the relief of the prostrate at a most critical moment. Of course he speaks for his own people only. Chili, flushed with victory, and destroyin with

vandal zest whatever she cannot deport, will scarcely submit readily to surrender her great prize, even when offered, as we offer her a liberal war indemnity; but if the issue is to be between commercial creditors with original rights and a mere intruder, it is not doubted that the solution, however distasteful to the vanquished victor, will be easy.

Moreover, all advices agree that Chili herself is not wholly content with the present outlook. All the neighboring republics are now jealous of her, and if, by attempted annexation, or a protectorate, she should seek a permanent enlargement of her power, she would but enter upon a long and perilous contest. If, on the other hand she should now retire, having tasted all the legitimate fruits of a real victory, and with her war indemnity assured, it would be a fortunate ending for her as well as for others. The latest advices indicate a more than ordinary anxiety in high quarters at Santiago to find some such solution of the serious problem of a white elephant.

While the interests of my clients are purely monetary, their protection involves at the outset international questions of such magnitude that they see no other course so proper at the outset as to lay before the President all the facts, and avail themselves at every step of such formal or informal suggestions as he may think it fit to favor them with.

As far, however, as they have planned for themselves, they have planned to avoid all complications, and if supported by the general assurance that the Executive will protect them so far as he finds them to be right, they anticipate no difficulty in peaceably harmonizing all interests by direct commercial negotiation without other governmental aid than that above indicated.

An examination of the papers herewith submitted will show the situation in outline to be this:

1st. American citizens are the legal representatives of an indebtedness from Peru to the original discoverer of guano, amounting to something like \$1,000,000,000.

2d. Under Peruvian law this claim is entitled to priority of payment over any indebtedness contracted since 1845.

3d. The owners of the claim—organized into a proper corporation—propose to take possession of the guano and rich nitrate beds and to work out their money without complication.

4th. At the same time they are ready to assume the \$300,000,000 due foreign bondholders and a fair war indemnity to Chili, and to pay these off from a sinking fund of a liberal amount, payments to begin in 1883.

The embarrassing features of the situation at the moment are the imminence of decisive finalities at Lima and the uncertainty of the provisional Peruvian Government. We hope to be able to send out a representative by the steamer sailing on the 10th of June; but as the Congress convenes this week, he may only arrive after definite measures have been already agreed upon.

Whether or not communication between the Department of State and the Minister at Lima by cable cipher, might stay finalities pending the transmission of full dispatches, the President upon due advice will determine.

The appointment of General Hurlbut to Lima, and of General Kilpatrick to Chili, will afford a favorable opportunity for a full discussion prior to their departure of all the interests involved and the settlement of their instructions in a form not likely to need further modification. I will attend at such conferences as the President may think it proper to appoint.

The executive organization of the Peruvian Company will probably be determined within the next 30 or 40 days; my clients remain anonymous for the time being for ordinary business reasons. I may properly say to the President that the presidency of the company will probably be offered to ex-President Grant, and that the direction throughout will be confided to hands not less competent, and to gentlemen scarcely less widely known. The magnitude of the interests involved and the quasi-national character of the corporation will at no time be forgotten.

Meanwhile it is almost necessary that I identify myself, as I can easily do.

During General Garfield's first term in Congress I resided at the capitol as the chief executive of the American Freedmen's Aid Commission, sustaining intimate official and personal relations to General Howard, then at the head of the Freedman's Bureau, and to leading members of both Houses of Congress, and having a pleasant personal acquaintance with General Garfield himself, General Howard, President Patton, of Howard University, President Fairchild of Oberlin, Honorable James Monroe, Mr. Whitelaw Reid, Mr. Albon P. Man, of this city (brother-in-law of Hon. Hugh McCulloch), one of the most eminent members of our bar, and scores of equally eminent gentlemen known to me.

In conclusion I may add that but for the exigency of the situation at Lima we should scarcely bring these interests to the attention of the government in so inchoate a form. It is but 30 days since I was empowered to act in the premises, and at the proper time the history of this claim will be shown to be self-explanatory as to its age and long

suspension; indeed I think no vindication of it at any point will be needed aside from the established historical facts.

Messrs. Evarts, Southmayd, and Choate, and others, equally competent counsel, will examine in detail all original evidences involved on behalf of the stockholders, and of course the originals themselves will be placed at the President's command.

I have thought it proper to submit thus in print and in writing the outline of the case in advance of personal conference, that the President might wholly at his own convenience give the matter attention, and might himself direct its future consideration, by correspondence or otherwise.

I have the honor to remain, the President's obedient servant,

JACOB R. SHIPHERD.

To the PRESIDENT.

It is our policy to maintain strictly the reserve suggested upon the cover of the "Prospectus" for the present.

The CHAIRMAN [to the witness]. The committee will now hear what you have to say as to your health.

The WITNESS. The committee will recollect that my physician's certificate suggested that my health was not yet completely restored, and that some caution might be necessary. I simply find myself engaged in a very vigorous flirtation with a line of neuralgia down my face, which has spoiled my night's sleep, and put me in a condition which I think would render it difficult for me to satisfy the committee, as I am not able to speak distinctly and clear. At the same time I should be exhausting something like the last reserve of my strength. I am very sorry to have to ask the indulgence of the committee in my own behalf, but, the facts being as they are, I think that the committee will not lose anything in the long run if it will take this rest and resume my examination to-morrow morning.

Mr. RICE. Do you think that you will be able to testify to-morrow?

The WITNESS. I have no reason to doubt it. I shall devote myself to rest to-day.

The committee then, on motion of Mr. Rice, postponed the further investigation of the witness until to-morrow at 2 o'clock.

WASHINGTON, D. C., *April 5, 1882.*

The Chairman laid before the committee the two following letters received by him from Mr. Hurlbut:

"U. S. LEGATION, LIMA, PERU,
"27th Feb'ry, 1882.

"MY DEAR SIR: I shall probably leave this city for the United States early in April on leave of absence.

"In reference to the 'Cochet claim,' which, I understand, is the foundation of the 'Peruvian Company,' I desire to state for your information, or for any committee of either house which may choose to examine it, certain principal and controlling facts.

"1. Alexander Cochet was a French subject—lived such and died such.

"2. His supposed heir, his illegitimate son, through whom the company claim, was never legitimized, or at all events I have no evidence of it.

"3. In that case Cochet's rights, if any, descend to his sisters living in France.

"5. Granting that Cochet had a claim and that it was properly transferred to the 'company,' still it was a French claim; and the company, having acquired nothing but a litigation, is not within the protection of the United States, which is only given for injuries and wrongs inflicted upon American citizens.

"6. There never was any law of Peru applicable to a case like that of Cochet, which gave 'one-third to a discoverer.' It is a grievous misconception. The law relates only to 'concealed property,' and was given after the suppression of the convents, to encourage the discovery of property belonging to such convents 'hidden and concealed.'

"7. Cochet himself in his lifetime never made any such claim.

"8. The whole question is 'res adjudicata.' The claim of Cochet was presented in 1861, before a mixed commission of Peruvian and French citizens, appointed under a convention for that purpose.

"That commission examined into the case and decided adversely to the Cochet claim.

"This decision is a public record in the French legation and the Peruvian archives I give you these statements in case there shall be an examination before I return.

"Very truly, yours,

"S. A. HURLBUT."

"LIMA, 15th March, 1882.

"MY DEAR SIR: I leave on the 6th of April; ought to arrive in New York 25th. Will come at once to Washington. Read my late dispatches. The United States are in a bad way out here in the line of reputation. I hope you will get them out of the scrape.

"Yours,

"S. A. HURLBUT.

"The Hon. CHAS. G. WILLIAMS."

Mr. BLOUNT. I move that the State Department be requested to furnish the dispatches referred to in General Hurlbut's letter. They evidently throw light on the matter.

Action on this motion was postponed by the committee, and the examination of Jacob R. Shipherd was proceeded with.

The CHAIRMAN. Mr. Orth informs me that he does not desire to put any further questions to the witness. Mr. Rice is the next on the list and will take charge of the examination.

The WITNESS. Will the chairman consider this a proper time for me to submit a supplement to the letter of May 20? I think that we have got to the bottom of that letter at last. That letter is abstracted as of May 21. It is one of the missing letters. I submitted a copy of it that was forwarded by my son at the last hearing of the committee. My recollection at that time was that there was a sort of supplement to it, either a postscript or what was equivalent to a postscript. I therefore wrote to my son to make a further search, and he has done it and sent on this paper, which is self-explanatory. It is a separate letter, dated May 21; but, as its contents show, it is really a postscript to the letter of May 20, and that, perhaps, will account for the abstracting of the letter in the State Department as being of May 21.

The letter was read as follows:

"MAY 21, 1881.

"SIR: Since my letter of yesterday was closed, the remarkable letter of General Grant to Senator Jones has appeared in print here, and has already determined my clients to reconsider their intention to offer General Grant the presidency of this company, and I am instructed to reopen this parcel and add this intimation. Of course, my clients read General Grant's letter through business eyes only—but none the less it disturbs them. I am further instructed to say that my clients will be glad to consider any nominations to the presidency of the Peruvian Company which the President may be so good as to suggest. Among many capable men, other conditions being equal, we shall, of course, prefer some one enjoying the President's entire confidence.

"Very respectfully,

"J. R. SHIPHERD.

"To the PRESIDENT."

The CHAIRMAN. You say that you received that from your son?

The WITNESS. Yes; and I am able to testify from recollection that it is substantially, and I believe literally, a correct copy from the letter-press book. I have not compared it myself.

Mr. RICE. Have you a copy of the letter from General Grant to Senator Jones to which you refer in this communication?

The WITNESS. No; I saw that in print in the newspapers.

The CHAIRMAN. Was it published on the 20th or on the 21st of May?

The WITNESS. It seems to have been published after the letter of the 20th of May was written. I can only identify the date in that way.

Q. In what newspaper did you see it published?—A. I saw it in one of the New York newspapers. I think it was published in all of them.

Q. And you say that this postscript was written in consequence of your having seen that letter published?—A. Yes; I intimated only in it that there might be some personal difference between General Grant and the administration, and it struck us (as a business proposition) that perhaps it would not be prudent for us to press the nomination of General Grant for the presidency of the Peruvian Company at that time. That was all there was of it. If the chairman will indulge me I would like to say a few words to the committee.

Assent being given, the witness proceeded as follows: "If the chairman please, it is due, I think, alike to the committee and to myself that I should say once for all that any publication purporting to be authorized by me and to discuss, outside of this room, any phase of the investigation going on here is bogus without benefit of clergy. Since my arrival here in obedience to the summons of the House of Representatives I have not said, and so long as I remain here in obedience to that summons I shall not say, one word or syllable for publication touching the subject-matter of this investigation, except through the committee at its regular sessions in this room. Ordinarily, of course, it would be vain to attempt to correct such publications, but the respect due

this committee, in view of a recent publication, seems to call for at least this one disclaimer."

The CHAIRMAN. What publication do you refer to?

The WITNESS. A statement in the Washington Republican of this morning, representing me as saying so and so. It is absolutely bogus. I have not opened my mouth to a newspaper man on the subject of this investigation, and I should think it a contempt to this committee for me to do so. I wish the committee to understand that I mean to observe the proprieties of the situation.

Mr. RICE. You say that the publication is bogus?

The WITNESS. I mean that I have not said to a newspaper man for publication one word, and I shall not say for publication one word. What I may have said to individuals to whom I had a right to speak, and which may have been passed around and revamped and got into print, I am not responsible for and cannot be. I simply mean that I do not propose to talk to the public, directly or indirectly, in relation to this matter.

Mr. RICE. Did you have the conversation which is published in the Republican this morning? I have not seen it before. It is headed "Shipherd promises a sensation."

The WITNESS. I had a conversation yesterday with a gentleman to whom I had a right to speak as freely as I would to any member of this committee. In answer to his questions, and only in answer to his questions, I made certain suggestions. These suggestions have been drawn out and turned into that interview. I should be sorry to name the gentleman in this committee's presence, for he ought to have known better.

Mr. RICE. Were you alone with him?

The WITNESS. I was.

Mr. RICE. Was he connected with the press?

The WITNESS. Not that I know of. I had not the remotest idea that I was talking to anybody who would repeat it for publication.

Mr. KASSON. The article referred to reads thus:

"SHIPHERD PROMISES A SENSATION.

"Jacob R. Shipherd was asked by a representative of the Republican what effect the death of Minister Hurlbut would have upon his disclosures. Said he: 'I have been charged with bribery, or attempted bribery, of Hurlbut. I must wash that off, dead or alive. I will show by documentary evidence that instead of bribery it was blackmail from the start. There are others I shall have something to say about if I am asked. I shall have something to say about Mr. Blaine also, that may not look so very well either. It depends upon what I am asked.' The House Committee on Foreign Affairs, and the many friends of Mr. Shipherd in this city, will be happy to learn that he has recovered sufficiently to bear exposure to the night air. In company with his wife he spent a most agreeable evening at the New York avenue skating rink."

Mr. RICE. That conversation you did have with some person whom you did not know as being connected with the press?

The WITNESS. I had a conversation similar to that, but there are slight differences of statement there which make a great difference in fact. I did not make precisely the statements set out there, but I did say some things which were similar to them. I was much distressed to see them in print, because I supposed that I was talking to some one who would be absolutely discreet. I have been almost absolutely guarded with regard to talking to any one, but I did not think it necessary to be absolutely dumb.

Mr. RICE. I suggest that the witness, after what he has said to the committee, should state what he did say and to whom he said it, and then should go forward and make such supplementary statement as is indicated in that conversation. [To the witness.] What was your conversation, and with whom did you have it?

The WITNESS. With every deference to the committee, it seems that I ought hardly to be called upon here to state what conversations I may have had with individuals outside of this committee-room, except those conversations in some way amount to a breach of the privileges of this committee. If so, I am prepared to answer to that.

Mr. RICE. You are a witness before the committee; you have opened this subject. Having opened it, it is open to the committee to pursue it. That you will recognize, will you not, as a principle of legal practice? The question was this: What conversation did you have (which you have indicated to the committee) and with whom did you have it? That means, what of the statement in this paper is true and what is false?

The WITNESS. I have opened this subject to the committee only so far as to state that I have not authorized the publication of any statement whatever. That is the only statement which I undertook to make to the committee. That much I deemed it

due to the committee to say—that I had not authorized and should not authorize the publication of any statement whatever. I am prepared to cover all the ground suggested by Mr. Rice—and carefully prepared. I desire to state to the committee certain facts which will cover all that I stated yesterday; but I wish to make these statements to the committee as part of my testimony in due form, regularly. I do not think, with all deference to the committee, that I ought to be called upon here to give an account of the private conversations which I may have had outside of this room, and which may have been accurately or inaccurately reported. I have not opened any such subject to the committee. I have merely stated that I did not authorize the publication of any statement whatever, and shall not do so.

Mr. RICE. But you have said that you had a conversation with some person in which you made some of these statements?

The WITNESS. Yes.

Mr. RICE. I now ask what were the statements which you made to that person?

The WITNESS. I do not think that I ought to answer that question.

The CHAIRMAN. You have stated that you did have a conversation similar to that reported here. Now, are you not free to state wherein this reported conversation differs from the one you did have?

The WITNESS. I can disclose that better by making to the committee the statement which I am now prepared to make, and which will cover all the topics that are involved. Concerning this conversation I can only say that there was nothing in it that was not in perfect keeping with what I am prepared to read to the committee.

Mr. RICE. Have you said to any one since you came to Washington this, in substance: "I have been charged with bribery, or attempted bribery, of Hurlbut. I must wash that off, dead or alive. I will show by documentary evidence that instead of bribery it was blackmail from the start." Have you made any such statement as that to any one since you came to Washington?

The WITNESS. The last statement, which is the important one, I never have made.

Mr. RICE. Have you made any statement of that character?

The WITNESS. I beg to be excused from discussing that conversation and from answering that question. I hope the committee will not think me disrespectful. But if the committee may go into this conversation I do not see why it may not go into any conversation that I may have had since I have been in Washington, with my wife or anybody else.

Mr. RICE. I do not, either.

Mr. KASSON. (To the witness.) As a lawyer, you are well aware that it is the practice, in cross-examining a witness, to ascertain if he made statements outside conflicting with the statements he made under oath, as affecting the veracity of the witness. In that view I hope that you will consider Mr. Rice's question.

The WITNESS. That may be; but I have, all ready to read to the committee, the real statements which I am prepared to make covering all these points, and I testify that whatever conversation I may have had yesterday, or at any other time, it was in perfect harmony with what I will read here. That covers the point.

Mr. RICE. Without waiving the question you may proceed and read your statement.

The WITNESS. After reading the statement I am prepared to be cross-examined if it can be shown that I made a different statement elsewhere.

The WITNESS then proceeded to read from manuscript, frequently, however, breaking into extempore remarks. The whole statement, written and unwritten, is as follows:

"If the Chairman please, under the order of the House of Representatives, the committee has made of me a demand, in terms remarkably broad and unqualified. With every possible disposition to respond to this demand as frankly as I have any right to do and without pausing to inquire too narrowly into the jurisdictional questions which such a demand necessarily raises, I am abruptly staid by the hand of death. Since our last session we have news that one of the most conspicuous names connected with this inquiry no longer stands for a living man, but only for the history of a finished life. In response to prior and specific interrogatories, I was, when our last hearing closed, midway in the history of my negotiations with this man, who has so suddenly passed out of life—out of this life—into the unknown beyond. The committee will not find it difficult, I hope, to credit me with those common instincts of humanity which bring any man in such premises to a full and solemn pause, to such a scrutiny of the past, the present, and the future as we rarely make elsewhere than upon the crumbling outer edge of life. Fortunately, I had already testified as to the substance of all that had passed between us personally, and only documentary evidence remains undisclosed, and of that documentary evidence, fortunately again, almost the whole was created either by General Hurlbut himself or by others than myself. The question whether I ought to go on and disclose this evidence as the facts now stand is one of infinite delicacy, and, in every respect, one of painful difficulty. I have weighed it with great care and have sought the wisest council within my reach.

"The situation is this: First, I am here solely in a representative capacity, and I represent interests, both social and monetary, of very great moment; personally, I

have not a penny's worth at stake. Second, in this representative capacity I am solemnly charged by General Hurlbut and by his recent colleague, the late Secretary of State, with one of the most infamous crimes known or knowable among men. If I am guilty as charged that guilt ought to be the everlasting damnation of all the interests I represent. This is the stake: Now, I am not guilty. I am not guilty as charged nor in any other wise in the premises in any shade. But how shall I show the facts if my accuser's death is to close my mouth? The accusations were pushed on to the very mouth of the grave. A communication intended to have all the force of an official certificate was volunteered by General Hurlbut to this committee so recently that it arrived here almost at the moment of his death. It concerned itself with an issue in nowise before this committee, yet vital to the interests which I represent; it was unsworn and in no sense testimony; it had not even been called for; it was like the letter of the Secretary of State of December 3, merely a wanton and deliberate attempt to assassinate; yet it had gone into the record and has been reprinted in every city in the Union. As if this were not enough, the immediate relative and next friends of the late ambassador seem to have received it as a legacy to pursue this wanton warfare. I will ask the clerk to read, that it may go into the record, an outputting of this kind, that in like manner has been telegraphed since the tidings of General Hurlbut's death was confirmed, and reprinted probably in every daily paper in the country."

The clerk read the article as follows:

"The late Mr. Hurlbut on Shipherd.

"CHICAGO, April 3.

"E. H. Talbott, a relative by marriage of the late Minister S. A. Hurlbut, recently received from Mr. Hurlbut a letter in which he says of the Peruvian Company, 'You may rest assured that I, at all events, am not complicated in the least degree with any discreditable project, and that I have taken all proper means to keep the proof where it ought to be. This man Shipherd is a curious mixture of the knave and the fool, with a decided preponderance of the former. His project is insane, has no foundation in law or equity, has no evidence of any kind in its favor, but there is somebody behind it. Shipherd himself, from his reported interviews, is a portentous liar, but somebody believes in him. I sent long ago to the department a full examination and rejection of his schemes, and have also sent back to the department his very extraordinary letter to me. All these will soon be in the possession of Congress, and my vindication will be complete as to that. But I think the United States are going to back down from the position I have held here, and this compels my return home. I have written the Secretary that if the government proposes such action I cannot and will not represent it any longer.'"

The WITNESS. I must leave it, therefore, to the sound judgment of fair-minded men, whether I ought to pause here and leave the great interests that have been committed to me under a cloud of infamous charges which I have the documentary evidence to disprove, because, and only because, one of my accusers has passed beyond the jurisdiction of human tribunals. I cannot see my duty lying that way. Every adviser whose counsel I have sought advises otherwise. No change of temper or of plan will be needed on my part if I go forward. I had planned no assault upon any one. I did not come here to accuse any one, and, unless new developments compel it, I shall leave here without having accused any one, living or dead, high or low. The Peruvian Company is accused. Its president is accused. But I am not here to defend or exculpate them, or either of them. I am only here to disclose frankly the whole record which this company and its executive have made in their negotiations with the Government of the United States, that the committee, the House of Representatives, and the country may judge who has been right and who has been wrong.

"With reference to General Hurlbut especially, I cannot say too plainly that I am not here to assert, nor to intimate, that, as a matter of fact, he was either a good man or a bad man, as we rate men. With his actual character I have nothing to do. He stands now, as we all must soon stand, before the only Judge who reads men as they are. But it is absolutely necessary to the very essence of my testimony that I should show what impression this man made upon me, what his character seemed to me to be, and why I dealt with him as I did. If I cannot show this, I cannot show the facts which were forced upon my attention; then I am foreclosed of the very essence of my defense—of the defense which I am bound in behalf of others to make, even if I were willing to waive it in my own behalf. So far as persons are concerned, I desire to say again that I have no more disposition to pursue the living than the dead. I long ago learned that no man can ever be seriously injured except by his own acts. The false and ridiculous statements with which the public ear has been filled concerning a legitimate enterprise and its honest promoters will die away in due course and the truth will succeed to their place. If this investigation shall hurt anybody, that hurt will only come from the disclosure of some man's record who has been so unhappy as to

make for himself a bad record. No man will be injured by any attack of mine. I see no choice but to proceed, therefore, as though the dead were still living and the living were dead; as though the names of men were but algebraic symbols and we were dealing with the abstraction of pure mathematics. And as nearly as may be I shall proceed thus to the end.

"In answer to a question of the chairman whether I deemed General Hurlbut purchasable"—

Mr. RICE (interrupting). I wish to say, for myself, and without consultation with the committee, this: You have read what you have prepared. You have stated what you have prepared. You profess yourself ready to go forward with facts. You also indicate that you are going forward to state your own impressions. I do not imagine that it is your province to state your impressions. It is your right and your duty to state all the facts within your knowledge. As to the question of delicacy, you are absolved from considering it. If the committee propose to question you, it is for the committee to decide, and not for you, on that point—the point of delicacy. I imagine (I do not know) that the committee will go forward and ask you to state every fact connected with the matter. Your impressions, so far as I am concerned, I shall neither ask for nor care for, nor do I presume it is competent for you to give them. I wish to add that, you having opened this matter by your statement, it is, in my judgment, clearly the duty of the committee to follow the lead which your statement suggests, and to elicit from you all the facts that are suggested by your statement; that is, it is not your right to come here and make an *ex-parte* statement, and then refuse to go forward and answer the questions which the committee shall ask based on that statement. But as to impressions, I do not understand that it is competent for a witness to give his impressions.

The CHAIRMAN (to the witness). Simply state the facts. That is the object of testimony.

The WITNESS. I expected only to proceed in the line in which the committee not only allowed me but encouraged me to proceed when I began the subject at a former hearing.

The CHAIRMAN. I think that every member of the committee will understand the propriety of the question which Mr. Shipherd has just read, and which I put to him on a former examination. I have seen one or two instances where I thought a wrong impression was produced as to my motive in putting the question in that form. I desire to state it here, and I hope that no reporter will fail to get it as I state it. My object in putting the question was this and this only: Not to get the opinion of the witness by way of prejudging the character of General Hurlbut, but to get the witness's idea of the character of the transaction; to ascertain whether it was a proposition to purchase a purchasable man, and then to question him (as I did) as to his judgment as to that kind of a transaction. I hope that I shall neither be misunderstood by the witness nor by the public. It was not to prejudge the case of General Hurlbut by the opinion of any one, but to lay the basis of a proper cross-examination as I understand it.

Mr. WILSON. I ask the witness to read the preceding sentence.

The WITNESS (reading). "I see no choice but to proceed, therefore, as though the dead were still living and the living were dead; as though the names of men were but algebraic symbols, and we were dealing with the abstractions of pure mathematics."

Mr. RICE. Now read the next sentence.

The WITNESS (reading). "In answer to a question of the chairman whether I deemed General Hurlbut purchasable when I wrote the wicked letter of June 2, I stated that I did so consider him."

The WITNESS then continued: I went on to intimate something more and to allude to facts, to impressions which were as strong as controlling facts. Certainly, my recent suggestion needs no support. It is a simple fact. I understood the question of the chairman to be intended to draw out the actual condition of my mind at that time; what I was after, what kind of a man I thought I was dealing with, and how I proposed to deal with him.

The CHAIRMAN. Precisely how you regarded that transaction.

The WITNESS. Exactly; I never have intended to discuss anything else. I shall be glad to have the committee hold me all the time closely to facts.

Mr. RICE. Your own impressions as to the character of the transaction, your motive for entering on it, what you intended to do or sought to do, I do not intend to exclude; but your impressions as to the character of General Hurlbut and as to his motives do not seem to me to be competent testimony in this inquiry.

Mr. WILSON. The witness may state what were the inducements that operated on him to write a particular letter or to do a particular thing.

The WITNESS. I take it that these facts, on the immediate rediscussion of which I am now entering, are the bottom facts in the whole investigation. The question is whether this was a proposition made with an intent to bias and corrupt the mind of a public offi-

cer. I will endeavor to speak directly to that issue. It is better that I should now state the exact truth. If I had considered General Hurlbut purchasable only, that letter never would have been written; for we were not in search of purchasable people. We had no use for them. The conviction forced upon me and stamped deeply on my mind was that General Hurlbut was not merely a purchasable man, but a man who in certain circumstances—I mean in precisely the circumstances in which I was forced to deal with him—would insist upon being purchased. That is what I mean, and that is what moved me, and all that moved me, to write the letter which I did write; that until he was so purchased or so placed he would play dog in the manger *ad libitum*. That is simply the conviction that was forced on my mind. I do not mean to suggest or to insinuate that General Hurlbut was not, as a matter of fact, the purest man in the world. I may have been utterly misled as to his character. I only protest, under the solemnity of an oath, and in the presence of the God before whom that man now stands, that no motive ever influenced me in connection with that letter except the motive of pure self-defense against a man who, I believed, held the key to the situation which would control all my interests, and who must somehow be placated, or I should not succeed in getting anything like justice. Not only had I the best of reasons for so believing in advance, but I have no choice now but to add that all my subsequent experience with that man confirmed that belief. He never was purchased, and he never was placed so that he could help himself, and he did nothing with reference to this great interest but to affirmatively hinder it, misrepresent it, and libel it, in season and out of season, as his whole record will show. And in this course he had at every step the constant, cordial, and effective co-operation of his colleague, the late Secretary of State, with a modification of conditions which will appear in due course. That allegations were current prior to June 2, 1881, affecting the reputation of General Hurlbut, of which a reasonable man might reasonably, and, indeed, must reasonably, take notice, I have already suggested, and that they were not without foundation I have already shown by reference to Clark's case, in the 102 United States Supreme Court Reports. I now offer in evidence, as exhibits to go into the record, a copy of the Aurora Semi-Weekly News, dated at Aurora, Ill., Friday, November 3, 1876, and a copy of the supplement thereto containing what purport to be copies of official declarations and charges on file in the War Department.

Mr. KASSON. As that is documentary evidence, I suggest that it be laid aside for the committee to consider whether it is proper for us to take in all that hearsay.

Mr. ORTH. You say that that paper is dated in 1876?

The WITNESS. Yes, sir. I was not about to offer it at the moment, but I was about to make a statement in reference to it. I do not know that any such official declarations and charges are on record in the War Department. I only know that copies of this supplement were widely circulated at the time, and that I never heard the authenticity or the accuracy of the imprint questioned, and I often heard the substance of these charges repeated as admitted facts and never disputed. Such reports forced me to the conviction that controlled my action. It is in that light only that I offer these papers—as part of the evidences that compelled me to a judgment. In October last I had a conversation with Mr. Blaine, occasioned by indications that General Hurlbut was then in the pay of the *Crédit Industriel*, and I asked him if he knew about these serious charges, and especially about the adjudication in the Supreme Court. His energetic reply was, "Oh, bless your soul, I went through all these, years and years ago. I know all about them—court report and all. And for my part, I never could see anything really out of the way in that business. At any rate, it is of no importance, for Steve was elected to Congress three or four times on that issue, with the whole record published all over his district." I did not at that time think proper to question the right of the head of the Cabinet to toss the Supreme Court out of one window and the War Department out of another, but when he ventured on an attempt to amend the record of the House of Representatives, I thought I had a right to hesitate in my own mind, and I did. This publication was made on the 3d of November, 1876, and I am able to lay before the committee the certificate of the Clerk of the House that General Hurlbut never served in Congress after that date.

The CHAIRMAN. I suggest that, in the course of the examination, that matter will be led up to in its natural order, so that it is not worth while to occupy the time of the committee with it now.

The WITNESS. I only drew these things together because they are topical, but I have finished all that I have really any disposition to say on this point. The whole of it bears upon the question as to whether I had a right to think that General Hurlbut was such a man as I thought him to be.

Mr. RICE. You do not expect to withhold from the committee, or to attempt to withhold, any facts suggested or referred to in the statement which you have just read?

The WITNESS. I do not know of any conceivable facts that I have any disposition to withhold from the committee which can throw any light upon the issue in this investigation.

Mr. RICE. You do not suppose that you have a right to read a statement here hinting at certain facts and then refuse to disclose those facts?

The WITNESS. If Mr. Rice will be kind enough to put me to the test by questions, I hope I will not be found wanting. I certainly am not capable of the meanness of being willing to come here and make *ex parte* statements.

Mr. RICE. So I supposed. The hour of adjournment has arrived. I shall desire to go fully into an investigation of every fact suggested by your statement this morning, and I hope that you will be prepared to answer all questions that may be asked and to produce your documents.

Adjourned till to-morrow.

WASHINGTON, D. C., April 6, 1882.

Mr. ORTH presented a note from the chairman stating that he was too ill to attend the committee meeting this morning, and asking Mr. Orth to take the chair. Mr. Orth accordingly took the chair.

The examination of JACOB R. SHIPHERD was continued as follows:

By Mr. RICE:

Question. The Peruvian Company, I understand you, owns the claim of Alexander Cochet.—Answer. So I understand it.

Q. And not that of Landreau?—A. Not that of Landreau.

Q. The prospectus which you furnished to the President in one of your earliest letters was a prospectus of the Peruvian Company?—A. Yes, sir.

Q. Have you a copy of the prospectus?—A. It is printed on page 634 of the printed document.

Q. Cochet lived in Peru a portion of his life and died in Paris, according to the statement in these papers. He left a natural son in Peru, and it is through that natural son that the title which is set up by the Peruvian Company passes to that company?—A. So I understand.

Q. You claim that Alexander Cochet was the owner of one-third of the guano deposits in Peru?—A. So I understand.

Q. And that that claim vested in him from the time of his discoveries, some time in 1840, up to the present time, covering therefore one-third of all that had been taken from those deposits in the interval?—A. So I understand it.

Q. You referred to some decree of the Peruvian Government on which that claim is based. Is there a copy of that decree anywhere among these papers?—A. A copy of it forms part of this prospectus.

Q. I read from page 656 of the printed document:

“LIMA, PERU, February 13, 1833.

“The council of state is of the opinion that the executive be made acquainted with the following:

“That any one, after the publication of these presents, who shall have discovered property belonging to any suppressed convents, or other property belonging to the state, shall have a right to a third part of said property.”

Is that the decree on which you base Cochet's claim to the one-third of the guano deposits?—A. So I understand it.

Q. Have you seen any notice, or do you know of any notice or biographical sketch in any scientific work or among the notices of any scientific men to which you can refer this committee for information in reference to the life and character of Alexander Cochet?—A. I think I know of none that is not quoted or referred to in one or the other of the documents which have been furnished to the State Department.

A. And those documents are all here?—A. I suppose so.

Q. You were the author (as I infer from the style) of this prospectus?—A. I compiled it from data furnished to me.

Q. Alexander Cochet, according to these papers, made certain claims upon the Peruvian Government, which are set forth in the printed document, beginning on page 660 and thence forward to page 672?—A. Yes; that seems to be the publication.

Q. Is the matter within these pages that which you refer to in your testimony and in some of your letters as the old Spanish pamphlet?—A. I suppose it to be so; I have not compared it.

Q. Did you ever see the old Spanish pamphlet itself?—A. No, sir.

Q. All that you have is a translation of a supposed or alleged old Spanish pamphlet. Is that true?—A. That is part of the truth.

Q. Will you make any addition so as to make the truth perfect on that point?—A. The first document that was furnished to me in this premise was what purported to be a manuscript copy in Spanish of the Spanish pamphlet. It was stated to me by the alleged owner of the pamphlet, Mr. Hevener, whose affidavit appears here, that but a single copy of that pamphlet had been obtained by him, and that he had paid about \$8,000 for it; that the original was deposited for safe keeping with some one who had

a safe in Lima, and that the manuscript copy which he brought to me he had had prepared with great care from that original. That was his explanation in relation to the manuscript.

Q. Did he tell you where he had obtained that original old pamphlet?—A. Yes; he told me that he had purchased it at Lima.

Q. Did he tell you how it happened that the pamphlet was so rare that there was only one copy of it, and that that one copy was of such value?—A. I do not think that any special explanation was entered upon. He made some explanation, but I do not recollect its details.

Q. Did he state why he left it at Lima rather than bring it home to his residence?—A. Yes. He thought that the risk of transportation was considerable and was unnecessary. He had formerly been a merchant there, and he explained that he had a friend there, who was a merchant, with a secure safe; that he had deposited the original there and had brought the copy with him.

Q. He had removed to Pennsylvania, his home, and was not at that time a resident of Peru?—A. He explained to me that he had been alternating in his residence between the United States and Peru for thirty years; that he expected to return immediately to Lima, and that he expected, when he went back there, to negotiate with the Peruvian Government or with the Chilean Government.

Q. Never during the organization of the Peruvian Company, or during the negotiations for the purchase of the claim by the Peruvian Company, or the negotiations with the United States Government, has that original copy been produced or shown in America, has it?—A. No, sir; not to my knowledge. I was about to state, in order to complete the facts of the case, that after that manuscript had been furnished to me, and this translation had been furnished to me, a large parcel of Cochet's original papers was received by us from Paris. The papers were delivered to our messenger there by the notary, who, according to the due and elaborate certificate furnished to us, had sealed them up at the time of Cochet's death. Among these papers was found a copy of the original award of 5,000 tons of guano, signed apparently with the autographs of the proper officers of the Peruvian Congress, and certified by the French minister under his seal to be a true duplicate copy of the original. The certificate further states that the signatures are known to him to be the genuine and original signatures of the officers of the Peruvian Congress. In connection with those papers were also found originals in the handwriting of Cochet, which (as my own translator, in whom I have every reason to have absolute confidence, assures me) contain duplicates of this pamphlet throughout. We have, therefore, as we think, in New York the original manuscript authenticating this pamphlet and covering the substance of the whole pamphlet.

Q. Do you know from whom these manuscripts which you have just spoken of were obtained?—A. As I am informed, they were delivered to Mr. Peter Hevener, who went to Paris as our messenger under a power of attorney given him by Gelacio Cochet to settle Alexander Cochet's estate. They were delivered to him by the notary in Paris, which notary had sealed them up originally. Mr. Hevener on his return brought a certificate of the French authorities, viséd and certified by the American minister, and I think also by the American consul at Paris. I have not myself examined them, but one of our counsel, Mr. Lord, has certified to me that the certificates are in due form and complete.

Q. And all these papers are here, are they?—A. No, sir. We have a vast mass of papers in New York which have not been published here. Among these papers my translator assures me that he finds entire duplicates of this original alleged pamphlet, the duplicate being in the handwriting of Alexander Cochet and covering those parts for which he seems to be responsible. We have a certified copy of the originals also.

Q. Do you understand that the pamphlet in Peru is printed or written?—A. It is printed.

Q. There is no other printed copy anywhere to your knowledge.—A. There is not.

Q. This Cochet, according to these papers, made claims upon the Peruvian Government during his residence in Peru, and those are the claims to which the Peruvian Company asserts it has succeeded. What did Cochet claim of the Peruvian Government?—A. If I read the papers aright, I have understood these to be the facts in relation to the claim of Cochet and the claim of the Peruvian Company. Cochet made certain investigations into guano with special reference to its utility in Europe. The results of those investigations, after a considerable period, were the initiation of a trade in guano to Europe. Guano was sent there and sold. Cochet, as I understand his papers and collateral papers, not only gave a good deal of attention to the matter in Peru, but went to England and interested his fellow-scientists there and prepared tables for the use of English farmers, which tables, I think, are still in use; at least they have been until a very recent date. He gave himself for some years to the development of the guano trade, beginning first with the development of its chemical qualities. He seems himself to have been purely a scientist and to have been but very moderately interested in any question of pecuniary advantage to himself. But he did

make a claim on one Allier, a countryman of his, who initiated the trade, for some partnership interest, to which Allier and his partner, Quiros, replied that they were the original discoverers and initiators of this whole business. Cochet could not submit to such a claim as that, it seems, and retorted asserting that he was the original discoverer. This issue between Cochet, on the one hand, and Allier and Quiros, on the other, seems to have been brought to a hearing in the Peruvian Congress, and as I understand the record, the Peruvian Congress decided first, generally and absolutely, that somebody had conferred a great advantage on the state; secondly, that a committee of award or a committee of prizes should inquire and determine who was the original discoverer, and that that original discoverer should be awarded a special premium of 5,000 tons of guano for his expenses, &c. When that award was made (as its terms show) there was an exception by the committee. The committee annexed to the award of this 5,000 tons of guano the condition that Cochet should donate to the state certain valuable discoveries which he had made in reference to the change of basis of the nitrate of soda into nitrate of potash. This Cochet was unwilling to do, and therefore the award gave him nothing. That is, it gave him the 5,000 tons of guano as the first discoverer, therein adjudicating that he was the first discoverer, but it gave it to him on conditions which he claimed the committee had no authority to annex, and which he refused to comply with. Under this state of facts, as a matter of fact, he did not get anything; and if, as General Hurlbut's recent letter states, the matter was brought up before the mixed commission in 1861, I am confident that the record will show that all that Cochet attempted to get was the 5,000 tons of guano, and that probably was refused to him because the terms of the award would prevent it. We have no knowledge that Cochet ever claimed one-third, or that he supposed he was entitled to one-third, of the guano in Peru; and, therefore, there may be a very wide difference between the claims set up by Cochet and the claims set up by my clients. The points which General Butler (among our counsel) asserts are that the effect of the award was simply to adjudicate, absolutely, that Cochet was the original discoverer of guano within the meaning of the decree that has been read; and that if he was the discoverer the title to one-third vested absolutely in him at the time of the discovery by operation of law. That is our legal claim. That is the position which all our counsel take; and we suppose ourselves to assert that claim now for the first time. Have I sufficiently answered your question?

Mr. RICE. Very clearly, indeed. I see that, in Cochet's petition to the Peruvian Congress, he asks the reward due to him for the first discoveries which he made and revealed, his words being, "I have raised guano to the estimation in which it is held at present." I understand you to state substantially that that was the discovery which Cochet claimed to have made—a scientific discovery, raising guano to the estimation in which it was then held—is that true?

The WITNESS. I understand substantially that that was his claim.

Q. Did he ever set up any other claim than that as a scientist he had discovered certain valuable properties in the guano deposits of Peru?—A. With reference to guano, I suppose not.

Q. And the guano discovery of his is all that the Peruvian Company has to do with?—A. That is all.

Q. And all these negotiations with Allier and Quiros were upon this hypothesis, that Cochet, having made these scientific discoveries, ought to be admitted as a partner into the contract which the Peruvian Government had made with those persons for the exclusive sale of guano?—A. So I understand it.

Q. And a quarrel arose between Cochet on the one hand and Allier and Quiros on the other, because they would not assent to that?—A. So I understand.

Q. On which these proceedings that you have stated were had with the Peruvian Congress?—A. Yes, sir.

Q. Cochet claimed a reward for this scientific discovery, and the Peruvian Government voted him a reward. Did he not accept that reward?—A. I have never heard that he accepted it.

Q. I see that Cochet, in his petition to the Peruvian Congress, says: "However, the committee impose on me an undue condition in granting the small reward I ask for—a reward which is promised and guaranteed by the Constitution, which I have lawfully earned, and which strict justice entitles me to. But that does not cause me to dismay, and although the prize should be granted without the condition of revealing my other discoveries I willingly accept said condition if only to show that I am not an impostor or charlatan." Did he not accept the award of 5,000 tons of guano made to him by the Peruvian Government for this discovery, as evidenced by his own statement here?

The WITNESS. Be kind enough to read on.

Mr. RICE. Certainly (reading): "This, with the proviso that I shall be awarded the other prizes proportionate to the importance of the discoveries, saving my right of service already rendered, and for which the committee has made grants; because a contract does not depend on outside parties, nor has ever bound them, nor should

I in human justice be shackled with so many and so great stipulations to secure what is lawfully my due."

The WITNESS. I understand, then, that he accepted with this additional proviso, which was never complied with. I have been unable, after diligent inquiry, to find any trace of anything like an adjustment or settlement that was ever made between Cochet and the Peruvian Government, either partially or completely. It may exist, of course.

Q. What were the other prizes to which he refers there?—A. That I can only ascertain by a somewhat careful examination of the document, and I have not read it for several months, so that it is not fresh in my mind. If reference be made to the award of the committee of the Peruvian Congress, it will be found that they concede that Cochet had made a great many discoveries—a considerable list of them—and the committee refers generally to the fact that these discoveries had resulted in the bestowal of untold wealth on the government and on the State.

Mr. RICE. He claimed something for some other scientific discovery. I do not care to go over that matter fully, because the committee can see whether or not this document does not amount to an acceptance of the reward which had been awarded him for his discovery. You claim that his natural son, Gelacio, inherited Cochet's claim?

The WITNESS. Yes, sir. We claim that on the advice of Peruvian authorities.

Q. Cochet died without a will?—A. No, sir.

Q. You have stated that he died intestate?—A. I stated so according to the information which I then had; but some months afterward his will was discovered, and we have a certified copy of it in New York.

Q. But you had first the information that he died without a will?—A. That he died without a will, and that under the Peruvian laws, if he died without a will, leaving no legitimate children, the illegitimate children who were identified by a baptismal record (that being the mode of legitimatizing natural children in Peru) would succeed as heirs.

Q. Did you not find afterward that as he died in France his brothers and sisters would inherit instead of an illegitimate son?—A. I have had no advice to that effect.

Q. But the will was found.—A. Yes; we have a certified copy of it.

Q. Where was the will found?—A. In Paris, in the possession of the notary in whose hands it was deposited at the time of his death.

Q. What was the name of the notary?—A. I have it not in my mind.

Q. Who found these papers in Paris?—A. Mr. Hevener.

Q. The same who found the other papers in Peru?—A. Yes, sir.

Q. On page 672 of the printed volume there is an assignment from Gelacio Cochet to somebody whose name is left blank. The first paragraph recites that "having understood that Señor Gelacio Cochet could prove his title to be declared judicially the natural son of the deceased Alexander Cochet, and as such to be acknowledged by the tribunals of Peru as having right to the premiums which have been awarded, or may in future be awarded, in favor of the deceased and his legal heirs"; and further on another paragraph recites that "Gelacio Cochet sells and makes over to (blank) the titles and rights which he may acquire as the legal heir of Alexander Cochet to the premiums which the government of Peru may assign to the said Cochet." All that Gelacio Cochet has assigned to this company, therefore, is his right as heir of Alexander Cochet to the premiums which may have been awarded, or may in future be awarded, in favor of Alexander Cochet and his legal heirs. Is that not so?—A. That is the phrasing.

Q. Now we have got at what the Peruvian Company owns. Does it own anything more?—A. It owns whatever in legal intent is conveyed by the word "premiums."

Q. You claim that under this decree of 1833, giving to the discoverer of convent or other property in Peru, belonging to the nation, one-third, Alexander Cochet, because he made a scientific discovery by which the value of guano was enhanced, was entitled to one-third of the guano deposits?—A. Our claim is that he was a discoverer within the meaning of this decree, and was therefore entitled to one-third.

Q. Was he a discoverer because of this scientific discovery?—A. Yes, he discovered the essential thing which the decree was intended to bring out.

Q. The guano beds had lain there since the days of Pizarro, and long before that, and were known?—A. Yes.

Q. But because Cochet made a scientific discovery you say that one-third of these guano deposits vested in him?—A. That is the view of our counsel.

Q. Did the Peruvian Government have any property in that scientific discovery?—A. It took about \$1,200,000,000 cash as the direct result of it.

Q. I ask, did the Peruvian Government have any property in that scientific discovery?—A. We so understand it.

Q. If the Peruvian Government had no property or ownership in this scientific discovery, then Cochet did not discover property belonging to the Peruvian Government, but property belonging to any scientific man who could find it in the realms of science?—A. I do not know that I understand the drift of the question. The phrasing

of the claim among our counsel has been this: Cochet discovered value—not the *rem*, but the value. The object of the decree was to bring within the control of the government the value by which the government might profit. Cochet brought out \$1,200,000,000 in value, and, under the decree, was entitled to one-third. That is the reasoning of our counsel.

Q. It was that claim, which you thought as valuable as an Egyptian pyramid when it was first made known to you in March, that you sought to engage the good offices of the United States Government in behalf of, was it not?—A. If I rightly understand the question, it was.

Q. The Peruvian Company was organized in October?—A. Yes.

Q. What was paid to Gelacio Cochet for his interest?—A. I decline to state.

Q. In the first prospectus which you inclosed in your second letter to the President, I find this (page 659 of the printed volume):

“15. The present proprietors acquired title directly from Cochet, and being all native citizens of the United States will vest the title in the Peruvian Company, a corporation already organized under the laws of one of the United States to receive such title and to collect the claim.”

You say that the corporation was already organized under the law of one of the United States. It was not already organized, was it?—A. My recollection is that at the time that this was written (which was perhaps two weeks before it was published) it was decided to organize immediately under the laws of the State of New York; and the expectation was that, before this pamphlet would appear, that organization would be completed.

Q. And therefore you put in as if it had been completed?—A. I put it in as if it had been completed.

Q. But it was not true?—A. It was true in that sense, and in no other. There was certainly no intention to mislead. That was the fact. It was expected that, before this pamphlet appeared, the company would be organized under the laws of the State of New York; and after the pamphlet was in print, it was decided to delay a little with a view of getting a special charter. That delay continued as a matter of fact until October.

Q. When you got this *very* special charter from the State of Georgia?—A. Yes.

Q. In March this matter came to your knowledge (before which time you state that you had as little information of Peru as you had of Patagonia), and in April you wrote to the President the letter which you have read. Was the letter, which you read here yesterday for the first time, a postscript to the April letter, or to the 20th of May letter?—A. It was a postscript to the 20th of May letter in the form of a separate letter. It was dated on the 21st of May.

Q. Have you any more postscripts to any of these letters?—A. Not that I know of.

Q. Have you got any other letters which you wrote to the President down to the date of the last letter, of which inquiry has been made?—A. I think that the limit of this present section of the inquiry was the first letter of June 2 (the bribery letter). I find here (after examining package of papers) no other letters to the President, and I have no recollection of any other.

Q. Or to the Secretary of State?—A. (After another search.) None appear up to that date.

Q. Or to Mr. Hurlbut?—A. (After another search.) The first letter that I have here to Mr. Hurlbut that has not been printed is dated June 13.

Q. On page 28 of the printed testimony there is a letter from you to Mr. Hurlbut dated May 26, 1881. Was that the first letter which you wrote to Mr. Hurlbut?—A. Yes.

Q. Then the opening of the correspondence between yourself and Mr. Hurlbut was by a letter written by you?—A. That is my recollection.

Q. Look at the letter as published on page 28 of the testimony.—A. (After examining the testimony.) That is, according to my recollection, the first letter that passed between us.

Q. The next step in the correspondence is the telegram from Mr. Hurlbut to yourself, dated May 28, on the same page?—A. Yes, sir.

Q. And the next, your answer to him of the same date?—A. Yes.

Q. And the next step in the proceedings between you and him was your interview of May 30 at the Fifth Avenue Hotel?—A. Yes.

Q. Which you detailed to us, and which you will find printed on page 29 of the testimony?—A. Yes, sir.

Q. Had the question of the non-assignability of this claim from a Frenchman or a Peruvian to an American citizen (so that it would come under the protection of the United States) occurred to you?—A. It had.

Q. Did it not seem to you very strange that it should not have occurred to the President of the United States?—A. No, sir. (After a pause) I should not answer that. I do not know but that it had occurred to him.

Q. When he said that it was as strong a case in law and equity as a case could well

be made, were you surprised at his saying so?—A. There was nothing that surprised me in that statement except in a gratified way; that such an approval should come so soon.

Q. The President had seen none of the original papers?—A. My statement is that the opinion was based on the case as made on the printed papers.

Q. It must have been a great relief to you at the time that your case was considered as strong in law and equity as it could be made, was it not?—A. It did not impress me as a relief; it impressed me as an encouragement. I had not gotten under the claim in any such way as to feel the burden of it and to be prepared to experience a sense of relief. My feelings were working along in regard to the probabilities, and this occurred to me as a very great encouragement.

Q. You say in your testimony, in regard to this interview with General Hurlbut, this: "He said that in such a case, and on the further condition that this claim should be turned over to a company, the management of which should be in the hands of gentlemen personally known to the government, and entitled on their records to the confidence of the government (meaning our government), the hearty support of the United States Government could be relied on"?—A. Yes sir.

Q. Mr. Hurlbut said that?—A. Yes, sir; and in answering that the phraseology which he used occurs to me in part, and I can give one phrase that he used verbatim.

Mr. RICE. You may make any correction of your former statement.

The WITNESS. I do not want to make any correction of it, but only to state something supplementary and confirmatory. He said, striking his knee with great emphasis, "Mr. Shipherd, I need not to have come all the way from Washington to tell you how infinitely the government would prefer to settle all that business down there with such an opportunity as you present, rather than leave it to be settled by other governments." These, I think, were his exact words.

Q. He never suggested the question as to whether the United States Government had any thing in the world to do with a claim which an American citizen had bought of a foreigner?—A. There was no suggestion of any difficulty in the way or any modification, except such a modification as I have stated.

Q. Did he tell you with whom he had talked and from whom he brought this assurance?—A. I stated with the best precision at my command the language that he used on that point. He did not say anything which I understood to be a suggestion of opening to me what discussions he had had with his superiors, or whether he had had any. He said in a categorical way—an ambassador-like way—"I am sent to tell you so and so. The government regards your claim so and so. We will do so and so. The Executive will do so and so"—always in that direct, affirmative way, without any explanation that I remember in regard to persons with whom he may have conferred. The test to which I put him was this: I asked him whether he had seen my papers. He said: "I have seen nothing but the slip which you inclosed in your letter. I know nothing of the merits of your case; but I am sent to tell you so and so."

Q. Have you any evidence that the President personally knew anything about this matter?—A. The only evidence on that point that ever reached me, to my recollection, was a letter from the President's secretary, Mr. J. Stanley Brown, acknowledging either my letter of April or my letter of May, and saying that it had been received and referred to the State Department. That, of course, said so much and no more. Whether it ever came to the eyes of the President or not, I have no means of knowing.

Q. You have stated all that you know bearing on that point?—A. I have stated all that I know bearing on that point.

Q. I understand that at that interview nothing was said to Mr. Hurlbut in relation to himself or his friends becoming interested in this matter?—A. Nothing whatever.

Q. But he left you and gave you his card, with his address at his home in Illinois. Did you not understand that he was then on his way home?—A. I did.

Q. He had stopped at New York on his way home?—A. Yes.

Q. He had not come all the way from Washington to New York on purpose to tell you that, but he was going home from Washington to Illinois in order to make his preparations for leaving the country?—A. I did not understand that the one fact excluded the other, by any means. He stated, "I am sent to tell you so and so." His manner was all that it would have been if he had come from Washington to New York and was about to return to Washington again. He mentioned, as a matter of fact, that he was on his way home, and that he should return to New York in about twenty days.

Q. On June 2 you wrote the letter which is printed on page 30 of the testimony, and which you have sometimes called "the wicked letter" and sometimes "the artistic letter"?—A. Yes, sir.

Q. I do not quite understand (although you have endeavored to explain) why you thought it better for you to write that letter, in making such a proposition, rather than suggest it to Mr. Hurlbut orally in conversation.—A. The reason was extremely clear in my own mind, and I should be glad if I can succeed in making it clear to the committee. In the first place, I did not propose to give General Hurlbut \$250,000, or

to give it to his friends, or any other sum. But, if I made any suggestion with reference to any possible interest in any form, and made it in conversation, I could not control the working of his mind which might, honestly or dishonestly, have turned it into something which I did not intend. I did intend to suggest to him exactly what I suggested here—that if it should be found perfectly proper for him or his friends to have some interest in this enterprise, such an interest might be arranged. I wished to insert, as the very essence of the whole thing, this suggestion of propriety to be thereafter discussed and settled. I was very much afraid that a suggestion of that kind, if made orally, might drop out of his mind, and he might as likely as not suppose that I made him a direct proposition of a gift or bribe. I wished, therefore, that whatever was said should be in a form that there could be no mistake about it, either then or thereafter, in any place.

Q. And yet you have stated that you made the offer to him because you deemed him purchasable?—A. Yes. And I have said that it was made, not merely because I deemed him purchasable, but because I deemed him a man who would insist on being purchased or being provided for in some manner as the condition of his not opposing us.

Q. And yet, believing that in your own mind, you preferred to make no oral suggestion of the kind to him, but to put it in writing in the form in which it now appears?—A. I preferred to be responsible for exactly what I meant, and for exactly what I said; and for that reason I put it in writing so that there could be no mistake.

Q. You meant that the offer should influence him?—A. I meant that it should influence him to the extent that he would not oppose our claim at the outset without any regard to its merits.

Q. You meant that it should influence him as it would a man whom you understood to be purchasable?—A. To influence him in the way I have stated—prevent him from opposing us without regard to the merits of the claim.

Q. Did you keep a copy of that letter?—A. Yes.

Q. You state in your testimony as to your interviews with General Hurlbut, "Mr. Hurlbut stated to me that he had been sent to tell me that the President regarded my case (as made out in the printed papers) as being as strong a case both in law and in equity as a case could well be made"?—A. Yes, sir.

Q. Are you sure that Mr. Hurlbut said that to you?—A. I don't know of anything of which I am surer.

Q. This was on the 30th of May, less than two months after you had given your own opinion that the claim was about as usable as an Egyptian pyramid?—A. Mr. Rice will, of course, quote more of what I said. That is a part of what I said, coupled with very important qualifications.

Q. If you had not understood Mr. Hurlbut to be a purchasable man would you have written him that note?—A. By no manner of means.

Q. Had he been considered by you to be a man of high probity, above the influence of a bribe or any other improper influence, you would not have written him any such note as that?—A. I never should have thought of such a thing.

Q. You heard nothing more from your note, and he never acknowledged it?—A. He never acknowledged it.

Q. And when he went back to New York he did not go to see you?—A. He did not.

Q. You expected that he would go to see you when he went back to New York?—A. He said he would.

MR. RICE. This matter, which was of such very great importance that the Government of the United States had at once accepted it as a just and equitable claim, and through which the government saw its course (as Mr. Hurlbut stated to you in that first conversation) to accomplish such great results, would naturally have induced him to call upon you the second time?

THE WITNESS. I should have supposed so.

Q. Have you any idea why he did not call upon you when he went back to New York?—A. Yes; a very clear idea.

Q. State what your idea is.—A. I suppose that he did not call because he was paid by the Crédit Industriel not to call, but to take sides with them.

Q. He did not accept anything from you, did he?—A. He never did.

Q. And you did not get him to do anything for you?—A. No, sir.

Q. And it was, as you have intimated here, because you supposed (and whether you had reason or not we will give you an opportunity to show) that he was bought up by somebody else?—A. Yes; that was the reason.

Q. So that we may drop here the inquiry, may we not, as to any improper connection between you and Mr. Hurlbut?—A. So far as Mr. Hurlbut being improperly interested in our favor is concerned, the committee has got everything within my knowledge. As to his being improperly interested against us, that is another branch of the question.

Q. And we have got a declaration from you that he was not interested in your favor, and that you could not get him interested in your favor?—A. He never was interested in our favor to my knowledge.

Mr. RICE. I pass now to your first interview with Secretary Blaine.

The WITNESS. I beg pardon. Is not that beyond the date of June 2? The chairman examined me only down to the date of that letter.

Mr. RICE. You have already testified in regard to your first interview with Secretary Blaine.

The WITNESS. It is immaterial to me; but I understood the chairman to fix that letter as a limit. That is as far as the chairman took me in his examination.

Q. On page 32 of the testimony your testimony begins in relation to the interview with Mr. Blaine. That interview was sought by you, was it?—A. It was in part. The interview was suggested first by Senator Blair. I acquiesced in his suggestion, and he made the arrangement at my request.

Q. Senator Blair was your friend?—A. He was my counsel.

Q. So that that interview was suggested by your counsel. This was July 25 or 26, and Mr. Hurlbut's interview with you was on the 30th of May. Had the matter slumbered from the 30th of May to the 26th of July?—A. Not so far as I was concerned.

Q. Had you received anything from Mr. Blaine during that time?—A. There had been no further communication or correspondence, I think, between the Executive and myself after the 30th of May and prior to the 25th of July.

Q. So that, for nearly two months, that important matter which (according to Mr. Hurlbut's statement to you) the government had passed upon and considered, slumbered unnoticed by the government?—A. Yes; so far as I know.

Q. Then, through your counsel, Senator Blair, you obtained an interview with Secretary Blaine?—A. Yes.

Q. You went with Senator Blair to Secretary Blaine's house on the evening of the 25th of July?—A. Yes.

Mr. RICE. I will not go over your statement in that interview excepting in part. In that interview did you make any suggestion to Secretary Blaine that he or any of his friends should be interested in this Peruvian claim?

The WITNESS. Oh, no, sir.

Q. Why not?—A. (After a pause.) It would be very difficult for me to say why not. It never occurred to me to make a suggestion of that kind with reference to any person who might possibly officially influence this claim except General Hurlbut.

Q. Why did you not make it to Secretary Blaine? He was the one who of all others had the most power to help you.—A. I beg Mr. Rice's pardon; but I know of no reason why I should be asked such a question as that.

Q. If you had made it to him you would have expected to have been shown the door?—A. I know no reason why any member of this committee should address such a question as that to me. I take the implication to go too far.

Q. You did suggest to him that you had written a letter to his appointee to Peru making this improper proposition, according to your statement?—A. I have never admitted that that was an improper proposition.

Q. But could you not make the proposition just as well to Secretary Blaine, as to tell him that you had made it to one of his appointees?—A. I do not know anything to say to such a question as that.

Q. Why did you suppose that he would listen to you when you stated to him that you had written this letter to Mr. Hurlbut, the minister to Peru, whom the President had appointed on his recommendation? Why did you state that to him, when you would not venture to make a proposition of the same kind to himself?—A. I would be very glad to answer that question very fully. At the opening of the interview with Secretary Blaine I deemed it proper to recapitulate to him everything that had passed between me and any representative of the State Department. That was the opening of the conversation. It seemed to be logically and chronologically the proper thing. I began, therefore, by referring to the letters which I had sent to the President suggesting that they had been probably referred to him. He responded to that with a nod of acquiescence. I specified each letter and its contents, referring particularly to the copies which I had sent to him to be delivered in his discretion to General Hurlbut. I then referred to my note to General Hurlbut and to his response by telegram and to our conversation. I recapitulated quite fully all that passed between General Hurlbut and myself in New York, intending thereby to assure myself that General Hurlbut spoke by the authority of his chief. The constant response of the Secretary was an acquiescent nod. No exception was taken by him to any of the statements which I made with reference to what General Hurlbut had said to me. I then went on to say to him frankly (with the frankness which I thought was his due—I forget the precise phraseology, but I remember quite distinctly my state of mind and the tone which I intended to give to the statement) that I had suggested to General Hurlbut in a letter so and so (which I quoted verbatim from memory), that if it was entirely proper the General or his friends might be interested, &c. I did this so that the Secretary might know absolutely everything that had passed between General Hurlbut and me. It never occurred to me at the time that the letter contained anything improper, taken

as a whole and taken as it was. It did not seem so to occur to the Secretary, for he expressed no surprise and made no response whatever that I remember, except when some suggestion was made that that was not an attractive offer. Then the Secretary smiled or laughed or made some acquiescent statement. I will say, however, that that matter was much more fully discussed, and very carefully dissected and analyzed in a later interview with the Secretary.

Mr. RICE. That we have not yet come to.

The WITNESS. That we have not come to. My recollection is that very little was said, commentwise, in relation to the letter at the first interview. In the second interview, which will come up in another direction, I shall show that the letter was was very thoroughly dissected and very carefully discussed.

Q. This letter, you have said, you sent to General Hurlbut because you deemed him purchasable, and that you would not have sent it to any official whom you considered a man of probity and integrity; and yet you did not hesitate to tell Secretary Blaine about it?—A. I did not, at all.

Q. Was Senator Blair present at the time you told this to Secretary Blaine?—A. I think he was.

Q. Was anybody else?—A. I think not.

Q. Did you say anything about it in the presence of Mr. Walker Blaine?—A. No; I think the only allusion to it was made at the opening of the talk in the evening. Mr. Walker Blaine was not present until the next morning, and only at the latter part of the interview.

Q. I find your testimony of that interview on page 34 of the record; you say there that the Secretary suggested probable doubts from a legal point of view; that he raised the question of the possible non-assignability of a "chose in action" as between nations, and that he said: "Here you have bought a claim." A little lower down in the testimony you say that the Secretary said: "You Americans have bought a claim of a Frenchman or of his Peruvian son, and now you come to ask the United States to interfere in your behalf on this purchased claim. Have you a right to do that?" Did you then say to him: "Mr. Secretary, Mr. Hurlbut said to me in New York that the government had no doubt (upon the printed evidence furnished it) of the perfect equity and justice of the case, and that on two conditions the government would support the claim?" Did you say anything to Mr. Blaine at that time of the inconsistency between the statement which Mr. Hurlbut had made to you and the Secretary's caution in asking you these questions, and in suggesting this very important legal difficulty in the way of your claim?—A. I did not.

Q. There was a very important distinction, was there not, between the statement which Mr. Hurlbut made to you and these suggestions of doubt made on the part of the Secretary?—A. Yes, sir.

Q. Did it not occur to you to say to Mr. Blaine, "Why! what did General Hurlbut mean by saying to me that the government had no difficulty with reference to this case, and would support it on certain conditions?"—A. It did not occur to me, and for the reason that my mind rarely works in that way. I was prepared to meet his objection on the merits directly as an original question.

Q. What reason had you to expect that Secretary Blaine would make any objection when General Hurlbut had assured you that the thing was all settled in the mind of the government?—A. My experience with men in all walks of life has been that they very often revise their opinions, their statements, and their promises. I very rarely attempt to hold men to original promises or original statements. I rarely interrupt a man when he brings up something entirely new, after having committed himself on a question. This did not disturb me in the least, because I was prepared to meet the objection on its merits.

Q. The next morning you were there again with Senator Blair, and you assured the Secretary that you did not want the Government of the United States to decide at all the validity of the claim?—A. At that time.

Q. And that all that you desired was that the government should give notice to the Peruvian Government that somebody made such a claim?—A. Substantially that.

Q. And the Secretary told you that that notice should be given?—A. Yes.

Q. And he did give it?—A. Yes, in his way.

Q. And that is all that he ever did in your behalf?—A. Oh, no, sir.

Q. Did he do more than that?—A. Yes, sir.

Q. We will reserve that for another time, as I do not want to go beyond the date to which the chairman went in his examination. I want now to call your attention to the letter on page 630—"Shipherd to Mr. Walker Blaine"—dated "New York, July 27, 1881." That was the day after your call on Secretary Blaine. I notice near the close of that letter this statement: "I am the sole executive head of both the Landreau and the Cochet claims." Were you the sole executive head of the Landreau claim?—A. For all purposes of negotiation with the government at that time I was specially constituted the executive head of the Landreau claim by persons who claimed no control, and who, I supposed, did control it.

Q. You have stated somewhere that that claim had been sold three times?—A. So I have been advised.

Q. Did you represent all three of the purchasers?—A. I represented all the purchasers whom I then knew of.

Q. So that you supposed you were at that time sole executive head of the Landreau claim as well as of the Cochet claim?—A. I supposed that I was.

Q. I see in one of these letters you say, "Can you give me the present address of Suarez?" Had anything been said about Suarez in your interview with Secretary Blaine?—A. Yes.

Q. You said nothing of that in the statement which you have already given of that interview?—A. I only gave, at the moment of my testifying, such parts of the interview as I then remembered. The question refreshes my recollection, and I will answer it as fully or as briefly as you please.

Q. Answer fully what was said about Suarez. I also notice that in one of your letters the *Crédit Industriel* comes in. You said nothing about that in your prior statement of this conversation with Secretary Blaine.—A. I had heard, through Peruvian sources, prior to this interview with the Secretary, that there was a French company holding a contract of some sort, under which it proposed to administer on all the guano and nitrate in Peru, having a plan which, if it were successful, would substantially defeat our plan. I had learned these facts, as general facts, prior to this interview, without the advantage of many details. Some casual reference to such a French company which I made led the Secretary to speak somewhat in this wise (I can give his language in part substantially verbatim, and in part I shall have to summarize it). He said: "Mr. Shipherd, these French people have been around the State Department ever since I have been here, and I understand that they were here a long time before. Their principal agent is Mr. Suarez, but the fact is that Mr. Elmore, who is accredited to us as confidential agent of Mr. Calderon (at that time he had not been recognized as minister), is as much the agent of the *Crédit Industriel* as Mr. Suarez is. The two travel together, as Mr. Lincoln used to say, like two puppies tied with one string, and wherever you find one you will find the other. I give you these points for your information. Now, I have always refused to do anything for the French company. I could not do less than refuse. They have no American connections; they have no American interests of any sort. Nevertheless, they have been here persistently insisting that the United States shall interfere effectively to compel a peace between Chili and Peru in order that they may enter on their contract. I have told them that such an application was preposterous and could not be entertained, but they are constantly here—Mr. Suarez as the open agent, and Mr. Elmore as the real agent, co-operating with him."

Mr. KASSON. Whom are you quoting now?

The WITNESS. I am quoting Mr. Secretary Blaine, and as nearly as possible verbatim. "Now," said he, "this man Suarez I have to see a good deal of, but I don't talk to him much. They had a Frenchman here a while ago, a Count Somebody, who was a very bright man. He could not talk English, but through an interpreter we had long conversations. He was very intelligent, and argued his case with great enthusiasm and great tact. But I told him that we could do nothing for him. He finally responded: 'Mr. Secretary, it is very hard that you will not interfere for us, nor allow our own government to interfere for us.' And I replied that it did seem hard, but that that was exactly the case; that we would not allow the French Government to interfere on behalf of such an important French company down there, and that certainly we would not interfere in their behalf. So (Mr. Blaine said) they never will make any headway at all; but they are a very respectable concern and have a large amount of ready cash. Now, if you could connect yourself with that company in such a way that your interests would be put in the front as American interests you might make such an agreement that you could use their cash; an agreement of that kind might be made which would be very advantageous to you. I charge you nothing for the suggestion." I thanked him for the suggestion; it looked in the direction of business and seemed to be very cordially made. I made some other responses, to which he said: "Shipherd, you can trade with those fellows in 24 hours. You have got exactly what they have not got and what they absolutely need—an American basis on which you have a right to ask for the interference of the American Government". Then he went on to say that he would be pleased at all times to forward the interests of an American company that were legitimate and proper; and that if we had a *bona-fide* title and were an American concern it would be his duty and pleasure to afford us every facility which was in the power of the government.

Q. Then you had satisfied him as to the doubts which he had suggested in his interview, that your claim, being bought by American citizens from a French subject, was not one which this government could properly interfere in behalf of. You had satisfied his doubts on that point?—A. I cannot say what process had gone on in his mind; my reply to him had been twofold.

Q. He said to you that you had exactly what this French company wanted, namely,

an American claim?—A. My recollection is that he used exactly that idiom. "You have got exactly what they want—an American basis."

Q. The next day, in your letter to Mr. Walker Blaine, you say that you will prepare a brief note for the use of the Secretary, stating the law covering especially the doctrine of choses and of international assignability, and in your letter to Secretary Blaine, the next day, you did send him something in regard to that?—A. Yes.

Q. Then he was not satisfied, was he?—A. I cannot undertake to say what the state of the Secretary's mind was. I can only answer the question approximately by saying that the answer which I made to him was this: "Suppose, Mr. Secretary, that Peru admits our claim, what, then, remains?" "Oh," said he, "if Peru admits it it is none of our business." Then I said: "Suppose it turns out that we bought guano and not a 'chose in action'—that we bought property?" "Oh," said he, "of course, if you bought property that is a different thing." The impression made on my mind was, therefore, that perhaps on that point the Secretary was not perfectly clear in his own mind, and therefore I intended to volunteer to supply a brief which would, I thought, cover the whole ground.

Adjourned till to-morrow.

WASHINGTON, D. C., *April 7, 1882.*

The committee met at 2 o'clock p. m., Mr. Orth in the chair.

The examination of JACOB R. SHIPHERD was continued as follows:

Mr. RICE. I send you the New York Herald of May 19, 1881, and I ask you if the letter there printed from General Grant to Senator Jones is the one referred to in your postscript letter of May 21, 1881.

The WITNESS (after examining the letter). My recollection is that that is the letter.

The letter was put in evidence, and is as follows:

"CITY OF MEXICO, *April 24, 1881.*

"MY DEAR SENATOR: I see by the latest dispatches received here from the capital of our country, that the deadlock in organizing the Senate is not yet broken, and that nothing has been done by the President to allay the bitterness which must be engendered by his most recent appointments. When the first batch of nominations for New York was sent in I was delighted. I believed then the President had determined to recognize the Republican party, and not a faction. But his nominations of the next day convinced me that the first act was but a part of a deep laid scheme by somebody to punish prominent leaders for being openly friendly to me. I cannot believe that General Garfield is the author of this policy. I give him credit for being too big a man to descend to such means for the punishment of men who gave him a hearty support in his election, and who are disposed to give him the same support now, for the offense of having had a former preference for some one else for the office which he now holds. But Garfield is President, and is responsible for all the acts of the administration. Conkling and Platt are the chosen Senators from the great State of New York, and that, too, against all the opposition of an administration created by the same party that elected them. This should give them all the stronger claim to be consulted in the matter of appointments in their State. When it comes to filling the most influential office in their State without consulting these Senators, it is a great slight. When he selects the most offensive man to be found it becomes an insult and ought to be resented to the bitter end. I sincerely hope the President will see this and correct his mistake himself, and restore harmony to the party. He owes this to himself and to those without whom he could not have been elected. Nobody believes that he could have carried the State of New York without the active support of her present Senators. Their passive support would not have answered. Without the State of New York General Garfield would not now be President. His rewarding Robertson is not only offensive to the New York Senators, but it is offensive to New York Republicans.

"The change of Badeau and Cramer, the two appointments in which I felt a strong personal interest, was very distasteful to me; the first, because of our personal relations and my wish that he should be kept where his office would support him until he finishes some work he is engaged upon, and which he could do without interfering with his public duties. The second, because it was at the expense of removing the son of my old Secretary of State, who probably never had his superior—certainly never for moral worth—in the department. It is true Fish resigned; but he did this from a sense of honor, supposing it to be the duty of representatives abroad to give a new administration the opportunity of saying whether they were wanted or not.

"Very truly, yours,

"U. S. GRANT.

"Hon. J. P. JONES,

"U. S. Senator, Washington, D. C."

By Mr. RICE :

Q. Up to the time that you saw that letter, it had been the intention of your clients to offer to General Grant the presidency of your company, had it been?—A. That had been a sort of general understanding. There had been nothing like a definite decision that that should be done. There had been a comparison of opinions, which resulted in an agreement that General Grant, as in every respect a representative citizen, one known to and entitled to the confidence of our government and of all other governments, would be the fittest man for the place if he would accept it, and the intention had been to bring the matter to his attention and to offer him the presidency.

Q. What is there in General Grant's letter which induced your clients to reconsider that intention?—A. Nothing whatever, but the indication that there might be a sharp political difference between General Grant and his friends on the one side and the administration on the other.

Q. Then it was purely a political consideration?—A. It was purely a political consideration which we looked at from a business-view point. It seemed to us that the president of our company should be in all respects in pleasant relations with the President of the United States, and we feared that there would be developed a difficulty here which would make such harmony impossible; that was all.

Q. There is nothing in that letter referring to your claim?—A. Nothing at all.

Q. But you simply thought from that letter that there might not be perfect harmony between President Garfield's administration and General Grant?—A. Exactly that.

Q. Senator Conkling was one of your counsel?—A. Not at that time.

Q. He was afterward?—A. Yes, sir.

Q. And your relations with General Grant afterward became more harmonious?—

A. We had no relations with General Grant at the time his letter was written.

Q. But afterward you did have?—A. Afterward we did have conferences with him, concerning which I am prepared to testify when the matter is reached in chronological order.

Q. The prospectus which you sent to the President did you send it to any other parties?—A. I did, after the first copies had been sent to the President.

Q. Did you send any to any members of Congress?—A. To some extent I did.

Q. To members of Congress generally or only to certain ones selected by you?—A. My recollection is that the copies that were sent to members of Congress were chiefly sent to Senators. There may have been, I think, a few copies sent to members of the House of Representatives.

Q. Did you receive any replies from members of Congress to that prospectus, or to your letter inclosing the prospectus?—A. I did.

Q. Have you them here?—A. No, sir.

Q. Can you state from whom you received them?—A. I think I can give some names.

Q. Give such names as occur to your recollection now?—A. If it is proper that I should do so I will; but I have some doubts as to the propriety of it.

Mr. BLOUNT. Do you wish the opinion of the committee about it?

The WITNESS. Certainly, sir.

Mr. RICE. The rule adopted by the committee was that if any question were objected to by any member of the committee, the committee would take action upon it; but, in the absence of any objection I presume the question to be concurred in by the committee.

Mr. WILSON. Does any member of the committee object to that question?

Mr. BLOUNT. Not at all; the objection comes up on the part of Mr. Shipherd, that he doubts the propriety of answering the question.

Mr. BELMONT. No member of the committee objects to it.

The acting CHAIRMAN. The rule only applies to where objection is made by a member of the committee. Where no such objection is made, of course it is taken for granted that the committee consents to have the question asked and answered. The witness, therefore, will answer the question.

The WITNESS. The only answer that I can make to the question at present is this: I had no correspondence with any member of Congress, as a member of Congress, with reference to any action to be taken by him as a member of Congress; and I am very clear that I ought not to answer questions that pertain to my correspondence or negotiations with any private individuals, as private individuals, except they are negotiations bearing directly on the issue or quasi issue before the committee, to wit: the question whether any minister plenipotentiary has been connected with this claim.

Mr. RICE. The committee is unable to divide a person who is a member of Congress into two parts—one part a member of Congress and the other part a private individual. So far as you had any correspondence with persons who are members of Congress (whether you consider that correspondence to have been with them as private individuals or as members of Congress) the committee cannot see the distinction and would press the question.

The WITNESS. Do I understand, then, that the committee holds that it is proper for it to inquire into any transaction of any member of Congress?

Mr. RICE. Any transaction with you in reference to this Peruvian Company.

The WITNESS. I have not been so advised.

Mr. RICE. Do you decline to answer?

The WITNESS. I do.

Mr. BLOUNT. Do I understand the witness to decline to answer the particular question, or to decline to be inquired of on that general line?

The WITNESS. Having stated that I have had no correspondence with any member of Congress as a member of Congress (that is, with reference to any official action taken or to be taken, or to be omitted to be taken by him as a member of Congress), but that whatever correspondence I have addressed to or have had with him has been in his private capacity as a private citizen, I say, with all respect to the committee, I have been advised that I am not bound to answer any question pertaining to such private correspondence, except it is, on its face, directly connected with the issue before this committee to be inquired into, to wit, whether any officer of the government has been improperly interested in the Peruvian claim. If the question is directly connected with that, I understand that I am bound to answer it, and I am prepared to answer it. If the committee will allow me, I will simply say that no considerations deter me from answering at all, except those of what seems to me ordinary courtesy towards private individuals. Whether Senators or members of Congress would like to have produced a correspondence which, if produced, would show on its face that it had been purely private, seems to me a question which I ought not to foreclose.

Mr. RICE. The committee cannot recognize your right to decide upon the character of correspondence, whether it should or should not be produced here by you, when it is with parties into whose conduct the committee has the right to inquire; and therefore, the committee does not recognize the statement which you have made as protecting you from the duty of answering the question.

The WITNESS. Do I understand, then, that the committee holds that it has the right to call upon me to produce correspondence here *ad libitum* in order that the committee may inspect it?

Mr. RICE. Correspondence with members of Congress in reference to the Peruvian claim.

The WITNESS. I do not see how that comes under the issue before the committee.

Mr. RICE. Did you have any letters from any members of the House of Representatives in connection with your prospectus or relating to the Peruvian Company?

The WITNESS. To the best of my recollection I had none.

Q. None with members of the House of Representatives?—A. None. I think I addressed but one communication to a member of the House of Representatives, and my recollection is distinct that I had from him only a verbal response.

Mr. RICE. If you make that a peremptory answer, I do not know what may be the effect of it on the minds of the committee. Then you do state positively that you had no correspondence with any member of the House of Representatives on the subject?

The WITNESS. To the best of my recollection, it is as I have stated, and inasmuch as that gentlemen to whom I did send a prospectus has himself volunteered a statement in respect to it, I am ready to be examined *ad libitum* as to him. I refer to Mr. Hewitt, of New York. I sent him the documents as I did to other gentlemen, and my impression is that, at the time, he either was not a member of Congress, or I was not aware of the fact; at least I had no thought of him as a member of Congress. I recognized him as among the capitalists whom I desired to approach; and, as a capitalist, I sent him the documents with a note suggesting that if he were to look into the subject I would be glad to confer with him. He sent me a very courteous verbal response by the young man who took the papers. That, to the best of my knowledge, is the totality of all the negotiations that I had with any member of the House of Representatives.

Mr. RICE. As to the remainder of the question, I will not press it now. On Wednesday you read a statement here which you had prepared relating to Minister Hurlbut and Secretary Blaine. On the 57th page of the testimony there is a paragraph relating to these officers as follows:

"The conviction forced upon me, and stamped deeply, was that General Hurlbut was not merely a purchasable man, but a man who in certain circumstances—I mean in precisely the circumstances in which I was forced to deal with him—would insist upon being purchased, or upon being so placed that he could help himself; and that until he was so purchased or so placed, he would play dog in the manger *ad libitum*. Not only had I the best of reasons for so believing in advance, but I have no choice but to add that all my subsequent experience with him confirmed this belief. He never was purchased, and he never was placed so that he could help himself, and he did nothing with reference to this great interest but to hinder it, misrepresenting it in season and out of season, as his whole record will show. And in this course he had at every step

the constant, cordial, and effective co-operation of his colleague, the late Secretary of State, with a modification of conditions which will appear in due course."

Have you any other reason than those which you have stated for believing in advance what you have there stated that you did believe in regard to General Hurlbut?

The WITNESS. Such reasons as I have stated there in detail or summarized.

Q. And you have none to add?—A. I would like at this point (if proper at this point) to inquire whether the papers which I asked might go into the record are to go into the record. They form a very important part of the considerations that affected me. I refer to the copy of the Aurora (Ill.) Semi-Weekly News, and the supplement.

Mr. RICE. Now you add to that, "But I have no choice but to add that all my subsequent experience with him confirmed this belief." What have you got to sustain that allegation?

The WITNESS. General Hurlbut's letters, and correspondence that is closely affiliated with them.

Mr. RICE. Will you produce them?

The WITNESS. When the proper time comes. They are far subsequent to the date that we are now limited to, as I understand.

Mr. RICE. If we are examining you in reference to this statement, I do not know why the proper time is not now.

The WITNESS. I will take the order of the committee in that matter.

Mr. RICE. If no member of the committee objects, you may consider that my question calls upon you to produce everything that you have from Minister Hurlbut, as a question which I shall soon put to you will call upon you for everything that you have from Secretary Blaine.

The WITNESS. The collateral correspondence to which I refer I have not here, because the order of the committee alone controlled me when I was last in New York, and I had no order to produce it. The subsequent demand served upon me after my return opened the doors for this correspondence, and I will produce it.

Mr. RICE. We called upon you for all your correspondence with any United States official.

The WITNESS. I refer now to collateral correspondence which throws light upon General Hurlbut's actions, and on his letters. I produce General Hurlbut's letters. There is collateral correspondence connected with those letters which throws light upon them, and which correspondence I have not here, because I did not understand that I was at liberty to produce it under the order that I had when I left New York. The committee will recollect that the general demand served upon me was served after my return to Washington. I have strictly followed the instructions of the committee.

Mr. RICE. Anything that you have to sustain the allegations which you there made you are required to produce as soon as possible.

The WITNESS. Yes, sir.

Mr. BLOUNT. Can you get them without your going to New York?

The WITNESS. No, sir; I should have to search the files for them myself. Under the new demand of the House there will be a very considerable amount of additional correspondence to come in. I have here seven original letters from General Hurlbut, and I have prepared corresponding copies of them. I will exhibit the originals to the committee and will give the copies to the reporter.

The letters were read and put in evidence as follows:

"BELVIDERE, ILL.,
"June 6, 1881.

"JACOB R. SHIPHERD, Esq.,
"New York:

"SIR: I am in receipt of your favor of June 3d. I think I understand the case of your clients.

"You must, however, be aware that the decision of an affair so grave, and involving such enormous possibilities, does not belong to me.

"Whatsoever may be the solution of the matter, it must come from the President, It is my duty to carry out such instructions as I may receive.

"Your obedient servant,

"S. A. HURLBUT.

"BELVIDERE, ILL.,
"June 16, 1881.

"J. R. SHIPHERD, Esq.:

"DEAR SIR: Yours of 13th received. You must be aware of the fact that I can take no cognizance of your case, unless it be referred to me from the Department of State.

"Whatsoever action, therefore, you may propose to have taken by the United States must be decided upon at Washington.

"Your obedient servant,

"S. A. HURLBUT.

"LEGATION OF THE UNITED STATES,
"Lima, Peru, September 12, 1881.

"JACOB R. SHIPHERD, Esq.,
"New York:

"SIR: I am in receipt of your letter of 19th August with documents and a sealed letter for Señor Manuel Arizola. The letter has been delivered to him.

"I have not received, either by mail or telegraph, any *such* instructions as you state were forwarded to me by the Secretary of State. If you have any serious design of carrying out the large plan you mention, it is of very great importance that you should be represented here at once by some singularly competent person or you will find the ground occupied by others.

"Peru needs immediate help, and from very abundant resources, if she expects to save the southern territory from the grasp of Chili.

"The probability is that her fate will be decided within two months.

"Of course I would prefer that an American corporation should control this question, but there does not seem to be such a corporation able, ready, and willing to act, and I cannot dictate to Peru from what source she shall secure the aid which she requires.

"If your claim, as successor to Alexander Cochet, is to be submitted to me, I shall need for its proper consideration clear statements of its origin and extent, and of the evidences which sustain it.

"As yet I find none of these in any papers submitted to me.

"None of them, so far as I can see, establish anything approaching to the magnitude of the claim you make.

"I await further communications, both from you and from the department.

"Very truly, your obedient servant,

"S. A. HURLBUT."

"LIMA, October 1, 1881.

"JACOB R. SHIPHERD, Esq.:

"I acknowledge receipt of your 'duplicates' and of your last letter. I very sincerely wish that the claim which you represent was as solid and substantial as you appear to consider it, and so indorsed and declared by the United States. It might in that case be of great use.

"I wrote you by last mail stating my troubles in accepting, with full faith, your ideas on the matter.

"There are three facts necessary to be strictly proven:

"1. What was the 'discovery' made by Alex. Cochet?

"2. To what extent and by what instrument has the Peruvian Government recognized or admitted his claim?

"3. What is the legal evidence of the legitimization of the natural son, under whom you claim title?

"I have taken some pains to ascertain the law and the facts as to these three points, and so far as I have gone find nothing encouraging.

"Cochet could not have discovered the agricultural use of guano, for it was used as a fertilizer by the Incas. So far as I can find, he never claimed this, and whatever discovery he may have made, and for which the premium of 5,000 tons was awarded by the committee on prizes, it certainly was not for that use.

"What, then, was his discovery as to guano?

"He tells plainly what was his discovery in regard to the nitrates, and evidently considered that of more importance than the other.

"(2.) I can find no recognition by Peru of his claim or right, except the premium of 5,000 tons, and that is only the report of a committee, which seems never to have been acted on. Is there any other document binding on Peru? If so, I would like to see it.

"(3.) Granting that Cochet had a valid claim, to whom did it descend on his death? Natural sons, by law of this country, can be legitimized and made heirs in two ways:

"One by a formal recognition, executed before a public officer in a prescribed way, by the putative father, the other by a testamentary recognition in last will.

"Both assume and require an act to be done by Cochet in his lifetime.

"I have no knowledge of any such act; and, in default of such act, his relatives now in France succeed to his rights.

"I write these things to you, not formally and as minister, but that I may call your attention in time to the character of proof required.

"Theophile Landreau (the French Landreau) is in this city, and has made a conditional sale of his rights, estimated by him at \$100,000,000, to a Chilian agguirré, to be offered to the Government of Chili for £300,000, or \$1,500,000.

"The privilege of purchasing at that rate extends for six months from September 1.

"As I wrote you before, if you are satisfied with your title, you ought to act very speedily, for the complications are daily becoming deeper.

"In the absence of any evidence as to the material points suggested, I can of course have no opinion on the subject, and you can scarcely expect me to use any official authority, until I possess such facts sustained by evidence, not merely by pamphlets and extracts from newspapers.

"I am, sir, yours, &c.,

"S. A. HURLBUT."

"LIMA, PERU, *October 12, 1881.*

"J. R. SHIPHERD, Esq.:

"Yours of 19th September was duly received, and in reply I wish to state that I do not pretend to be fully informed as to the French society which it is understood has offered its aid to the Peruvian Government.

"Mr. Elmore undoubtedly is, and my information as to Dreyfus corresponds with his statement.

"Your obedient servant,

"S. A. HURLBUT."

"LIMA, *October 26, 1881.*

"J. R. SHIPHERD, Esq.:

"DEAR SIR: Yours of 28th September was duly received. I have little to write you of interest.

"The Chilean plenipotentiaries arrived here to-day, but as yet nothing is known of their purposes. The whole of Peru is rapidly accepting the government of Mr. Calderon, and Pierola is reported to be prisoner to his own troops.

"It may be assumed that peace negotiations will be under way before you receive this, and if you expect your interests to be looked after by the United States you had better obtain some instructions to be sent me by telegraph. As yet, I have none of the character you indicate in your letters. A company which represents, as you state, such vast interests and numbers among its members, such heavy capitalists, can well afford the expense of telegraphing.

"I do not know that any change of dominion over the Salitre territory will take place, but it is among the possibilities.

"Chili means to seize and hold it if she can, and Peru *alone* cannot prevent it.

"The United States can if they choose, but the government at home must say so. Hitherto this has not been said, or, if said, I have not had notice of it.

"Everything waits for the action of the United States.

"Yours, very truly,

"S. A. HURLBUT."

"LIMA, PERU, *November 23, 1881.*

"JAMES R. SHIPHERD, Esq., *New York:*

"SIR: I have sent to the department your correspondence addressed to me, to be read by the Secretary. By this mail I also send your last singular letter. Until further instructed by the department, I decline correspondence with you.

"If you can satisfy the department of the validity of your Cochet claim, I will very energetically and faithfully carry out any instructions received. You have wholly failed to furnish me with any proof, although requested, and have repeatedly written that instructions were sent, or to be sent, which I have never received. The tone of your letters is disagreeable, and I do not wish further communication.

"Your obedient servant,

"S. A. HURLBUT."

The WITNESS. There was a letter of a later date, of which General Hurlbut himself forwarded a copy to the State Department. It is printed in the volume, and therefore I have not produced the original of it.

Mr. RICE. Refer the committee to that letter in the printed volume.

The WITNESS. It will be found on page 585.

The letter was read, and is as follows:

"LIMA, *December 17, 1881.*

"JACOB R. SHIPHERD, Esq., *New York:*

"SIR: I have tried, as far as I could, to make you understand that I cannot have, and ought not to have, anything to do with your company or yourself, as its agent, or with any other similar. Both my general and particular instructions forbid me from taking notice of such matters unless referred to me by the Department of State. Once more, and for the last time, I repeat this statement. I shall return your papers to the Secretary of State, as I have done the others, and definitely close all correspondence with you, unless directed by the department.

"Your obedient servant,

"S. A. HURLBUT."

Mr. RICE. Are all the letters to which Mr. Hurlbut refers in these letters to you, and the receipt of which he acknowledged, printed in this volume?

The WITNESS. I think not.

Mr. RICE. Produce copies of any letters that you wrote to him which are not in the printed volume.

The Witness produced the following letters, which were read and put in evidence:

“JUNE 13, 1881.

“Hon. S. A. HURLBUT, *Belvidere, Ill.* :

“DEAR SIR: Your favor 6th was duly received. The present inclination of our people is to relieve the strained situation at Lima as soon as may be, and, if necessary, to defer the formal completion of our organization until after the negotiations at Lima shall have been settled. By ‘formal completion,’ I mean only the distribution of stock in detail to representative capitalists who cannot readily be reached. The legal organization of the company, the perfection of its title, &c., will, of course, be fully completed before the formal recognition of any government is asked.

“The pending proposition is to send out two commissioners, with full power to conclude such treaties as in the presence of all the facts shall seem wisest, and to make these ready to sail, say, by the end of July—following you, say, at thirty days’ distance.

“An unofficial representative of the company will go earlier, say by June 30 or July 10.

“I shall expect you here about the 22d, unless otherwise advised.

“We do not underestimate what you well characterize as ‘enormous possibilities.’

“Yours, truly,

“J. R. SHIPHERD.”

“JUNE 14, 1881.

“Hon. S. A. HURLBUT, *Belvidere, Ill.* :

“DEAR SIR: Since writing yesterday it has become desirable to know, if we may, approximately, your plan of journey—whether by the isthmus or by San Francisco—as one of our people is planning to go at the end of the month, and, if agreeable to yourself, would be a *compagnon de voyage*.

“Yours, very truly,

“J. R. SHIPHERD.”

“OCTOBER 19, 1881.

“SIR: I inclose herewith an official copy of a letter subscribed by the president of the Peruvian Company bearing date October 1, 1881, and addressed to Mr. J. F. Elmore, minister of Peru, resident at Washington; also a like copy of a similar letter identically subscribed, bearing date October 5th, and addressed to Mr. M. Martinez, minister plenipotentiary of Chili at Washington. Copies like these inclosures were duly filed in the Department of State, at Washington, on the 11th instant, and two days later the respective originals were duly delivered to the addresses through the Hon. George S. Boutwell, the company’s attorney at Washington. These inclosures are forwarded without comment for your seasonable information only in advancing the instructions from the department, which will hardly be ready, I suppose, for this steamer.

“I have just returned from Washington, whither I went to show the Secretary your letter to me of September 12th, and to take his advice upon it. He agrees with me in the confident belief that you have somehow widely misapprehended fundamentally material facts and issues, and will join me in the endeavor to set you right. I will endeavor to contribute something toward this result for transmission by the next steamer, and, in the mean time, I beg you to remind yourself what you seem to have, so far, totally forgotten, that your first and most important official duty, *ex virtute officii*, is not to help Peru but to look out for American interests. I do not for a moment hesitate to use this frankness, speaking as I do for citizens to a citizen. The extraordinary attitude you have thought fit to take, in the judgment of my associates, warrants unqualified frankness, and I rely upon your good sense not to mistake frankness for rudeness.

“I am, sir, your obedient servant,

“JACOB R. SHIPHERD.

“To his excellency the Hon. S. A. HURLBUT,

“*Lima, Peru.*”

“NOVEMBER 7, 1881.

“SIR: Thanks for your favor of October 12th. To cover chances of miscarriage only I inclose duplicate—copy—of my last:

“I was in Washington several days last week and improved the opportunity to take the views of friends there, including the Secretary of State. All approve the precise position taken.

"An American protectorate was directly discussed, and received with general favor. If Mr. Calderon should directly apply for it I think Congress would approve the application, but *only* on the ground that large *private American* interests there need protection. It could not be popularized on any other footing, and Mr. Calderon should base his application directly and chiefly on this ground, if he makes one.

"Mr. W. H. Cilley is here, and the large interests he controls are also to be considered. He and I will work in entire harmony hereafter; he heartily approves my plans in all their parts, and his judgment is certainly entitled to great respect.

"Senor Martinez is very uncomfortable since our demands were served, and while he talks roomily, I have the best of advice that he will be ready to discuss terms with me at no distant day. The papers are giving increased attention to the situation, and so far as our interests are concerned they all hold the same tenor—they are heartily with us.

"Yours truly,

"J. R. SHIPHERD.

"Hon. S. A. HURLBUT, &c.,"

"NOVEMBER 25, 1881.

"SIR: The President directs me to inclose you, as I do herewith, copies of the four letters sent you by the last steamer.

"These are to cover the chances of miscarriage.

"Very respectfully,

"A. HADDEN,
"Private Secretary.

"To Hon. S. A. HURLBUT, *Lima*."

Mr. RICE. Was there anything else between yourself and Mr. Hurlbut?

The WITNESS. To the best of my knowledge, I have submitted to the committee the entire correspondence between General Hurlbut and myself.

Mr. RICE. You never saw him but once in reference to this matter?

The WITNESS. That is all.

Q. So that we now have an exhaustive statement from you of all the conversation and correspondence which passed between you and him relating to this matter?—A. Yes; there is collateral correspondence, not between myself and General Hurlbut, but between myself and parties who were in relations both to General Hurlbut and myself in connection with this matter, which correspondence throws light on his correspondence and helps to interpret it.

Q. There is nothing in this correspondence anywhere that gave you any reason to suppose that he was interested in your claim, except as he properly should be, acting under instructions from the home government, is there?—A. There is something in this correspondence that is in New York.

Mr. RICE. I do not inquire about that now. I mean in this correspondence that you have laid before us between yourself and Minister Hurlbut.

The WITNESS. If I understand this question, it is intended to call for an interpretation of or a comment on this correspondence.

Mr. RICE. Anything that will justify the statement which you made before this committee on Wednesday last.

The WITNESS. The correspondence of General Hurlbut, as a whole, taken in connection with the interview as to which I have testified, made at first this impression on my mind, and on that of my associates. I will take the liberty of naming two representative gentlemen among these associates, as a matter of importance. One is Mr. Scott Lord and the other Ex-Senator Eaton. These were only two of at least half a dozen equally intelligent gentlemen who expressed to me their independent judgment on the correspondence, coinciding with my own. General Hurlbut had come to me and made the statement concerning which I have testified; and he then wrote to me after he had received my 16-page letter, saying: "I think I understand the case of your clients." There was no suggestion then of any difficulty whatever in the case. The impression made on our minds was that so far as he was concerned he had found no difficulties, as he had expressed none at the interview. On the presumption, therefore, that the statement which he had made at the interview expressed his personal and official views, as well as those of his superiors, we proceeded during the summer, until the time came when we wished to communicate (having an opportunity to do so) directly with Mr. Calderon, President of Peru. The opportunity to communicate with him directly was in a sense indirectly. It was by correspondence prepared by a gentleman here, addressed to Mr. Arizola, one of whose letters has been printed—Mr. Arizola standing very near to Mr. Calderon, and in such relations to him that the advice given to us was that this correspondence would, in effect, be our overture directly to President Calderon. The status down there being a status of war, and there being (as represented to us) great uncertainty in regard to the mails, I took the liberty of inclosing the correspondence to General Hurlbut, with a request to have it delivered. Of course, I was fully aware that I was simply relying upon his kindness, and

was not assuming that I had any right to ask him, under any circumstances, to forward private correspondence. But presuming on his courtesy in the premises, personally and officially, I inclosed to him a sealed letter and documents to accompany it. My letter of transmission is printed in this volume. I took the pains, in order that General Hurlbut might understand that this was not merely private business, but was as emphatically public business as it was private, to inclose to him a translation of the most important parts of the sealed letter, so that he might see that this was, in effect, an attempt to present our case directly to President Calderon, and to present it in the interest of Peru. The letter was written by a gentleman who was here in an official capacity as the official representative of Peru. As a matter of fact, he was addressing his own chief, in the interest of Peru exclusively, and suggesting (as his letter, which is printed here, shows) how Peru might avail herself of this promise of an opportunity to get out from under the power of Chili. That was the nature of the correspondence which I intrusted to the minister, and, as I say, I was permitted to lay openly before him, substantially, the whole letter so that he might see what the business was. General Hurlbut replied, saying: "I have received the sealed letter and the documents, and the letter has been delivered." I shall produce before the committee a letter from Mr. Arizola to his correspondent deploring the fact that the documents were not delivered with the letter, because the letter without the documents was unintelligible. It seemed to me a most remarkable circumstance that the American minister, with all the facts before him, should attempt to make such a distinction as that. That was the first fact which attracted my attention; but it seemed to me infinitely significant. I sent first for Mr. Lord, who was familiar with the correspondence that had been sent, and I gave him General Hurlbut's letter to read, without comment. He read it, handed it back to me, and with a voice trembling with emotion said: "Hurlbut is a double damned, deeply dyed villain; that is my opinion in the premises."

Q. Had Mr. Lord any other evidence than what he had there?—A. The committee must interrogate him. I am simply giving facts, and facts which went, of course, to affect my own opinion. Mr. Lord is a much older man than I am. He is a man interested in this matter only as counsel. He gave his opinion only as counsel, and he gave it as a man accustomed to deal with men. He went on to say: "There is no conceivable reason why General Hurlbut should have separated these documents from this letter, unless he intends to get in between you and Calderon and to prevent your dealing directly with him." Ex-Senator Eaton, within twenty-four hours afterward, was consulted and the facts were laid before him, and he gave substantially the same opinion, and in very strong terms. At least four other gentlemen, equally intelligent and capable of forming independent opinions, were sent for and expressed the same opinion—that General Hurlbut was certainly inserting himself between me and Calderon, with the intention of defeating negotiations and preventing our dealing with him. The same mail which bore this letter from General Hurlbut acknowledging the receipt of the letter and documents (and they were all inclosed in one large envelope, so that he must have received the documents as well as the letter) brought a letter from Mr. Arizola to his correspondent. That correspondent sent for me and said, "I have a letter from Mr. Arizola"—

Mr. RICE (interrupting). I think there must be a limit put somewhere. That letter from Mr. Arizola can be produced, can it not?

The WITNESS. Certainly. It is not within my control, but I suppose I can get it.

Mr. RICE. I do not know how other members of the committee may feel, but I do not want to have you state the contents of letters here when the letters themselves can be produced.

The WITNESS. I am subject to the orders of the committee. I was merely now giving a topical statement; but I will be glad to be limited in any way the committee may suggest. Do I understand that I am to finish this statement of the fact?

Mr. RICE. Yes.

The WITNESS. I will state the fact simply. The letter being in Spanish I could not read it. I state the fact that Mr. Arizola's correspondent sent for me and read to me in English what purported to be the translation of a Spanish letter to him, in which Mr. Arizola protested with some exclamations—

Mr. RICE interrupted the witness, but immediately allowed him to proceed.

The WITNESS. I will give it simply as conversation between myself and this party, for I do not pretend to know what was in the letter. I will simply undertake to produce the letter hereafter, if I can get control of it. Mr. Arizola, as his correspondent stated to me, was in great annoyance and distress that the documents had not been delivered, because the letter was unintelligible without the documents. He went on to say that he had sent for President Calderon, and that they had together gone through the letter with great interest, but their annoyance was deepened at the non-appearance of the documents. He stated that the American minister had been so kind as to come personally to his house and place the sealed letter in his hands. He spoke in the most grateful terms of the courtesy of the minister.

The acting CHAIRMAN. You say that this letter and the documents were placed in an envelope and sealed by you, and that Mr. Hurlbut took the letter, but not the documents, to Mr. Arizola?

The WITNESS. There was a letter written to Mr. Arizola. That letter was delivered to me, sealed and addressed to Mr. Arizola. I put with it a translation of its contents, or of the most of its contents. I put with it the letter of transmittal which I wrote to General Hurlbut. I put with it a set of our printed documents to go with the sealed letter. My letter of transmittal stated that these documents were to be delivered with this sealed letter. I put all these in a large envelope, from ten to twelve inches square, and that envelope I sealed myself and put in the post-office, directed to General Hurlbut, American minister to Lima.

The acting CHAIRMAN. And General Hurlbut retained the documents and delivered the sealed letter?

The WITNESS. I simply know from his letter to me that he received the large envelope, containing my letter of transmittal, the sealed letter, and the documents, and that he had delivered the sealed letter. By the same mail came a letter to Mr. Arizola's correspondent informing him of the fact that he had received the sealed letter, but had received no documents. It seemed to us at once very remarkable that the documents should have been retained. Mr. Arizola's correspondent told me (I am now giving the totality of my knowledge on the subject) that he replied to Mr. Arizola saying that there was no reason why the documents should not have been delivered with the sealed letter, because they had been sent simultaneously. Subsequently I wrote a letter to Mr. Arizola, a part of which has been printed here. I will supply a copy of the entire letter, if the committee wish, because in the opening part I refer specifically to this matter and directly charge General Hurlbut with a lack of good faith in delivering the letter only and not the documents. In response to that I received a letter directly from Mr. Arizola, in which he says that the American minister had explained everything to him by telling him that he had not received the documents until two weeks after he had received the letter.

Mr. RICE. Had he then been given the documents?

The WITNESS. Yes. Two weeks afterwards they were delivered, with this explanation by General Hurlbut, that he had not received them until two weeks after he had received the letter.

Mr. RICE. Were the documents done up in a separate envelope, or were they inclosed in the large envelope?

The WITNESS. They were inclosed in the large envelope. The letter of transmittal which is printed in the volume, beginning on page 552, opens in this way:

"AUGUST 19, 1881.

"MY DEAR SIR: When the gentleman to whom the inclosed letter is addressed calls for it"—(I will explain that by saying that Mr. Arizola's correspondent sent him, through another source, a brief note requesting him to call at the American legation and obtain an important package. It arrived when Mr. Arizola was on his sick-bed; and Mr. Hurlbut was kind enough to go personally to his house and place the letter in his hands)—"please deliver to him, with the letter, all the printed inclosures except the one upon which I have written your own name."

That one was a copy of the pamphlet "Truth Demonstrated," of which General Hurlbut up to that time had no copy. I wrote his name on that one pamphlet. This was intended to indicate clearly enough how the documents were to be delivered, and it seems they were delivered two weeks later without any additional information whatever.

Mr. RICE. Have you stated what those documents were?

The WITNESS. My recollection is that they were our prospectus, a copy of "Truth Demonstrated," and, probably, copies of our proposed agreement with Peru, and of a plan for a sinking fund. These were the documents that we were then using. For the present at least, if the committee please, I will let that suffice with reference to this one feature of the correspondence. I will now proceed to another feature of the correspondence which ran through all Mr. Hurlbut's letters; that was the utter inability of General Hurlbut to find anything in this case.

Mr. RICE. Was he singular in that?

The WITNESS. I was about to indicate what seemed singular to us. Before he came to see me in New York the State Department had all the papers, and on those papers he had come and made the statement which he did make.

Mr. BLOUNT. I understood you to say yesterday that when Mr. Hurlbut met you in New York he said he had not read the papers in the State Department, and that what he had to say to you was simply in the nature of a message from the department. Am I correct?

The WITNESS. Quite correct. Before he met me in New York the State Department

had all the papers; and he came and made the statement which he did in behalf of the State Department. At that time I gave him all the papers, and he said he would take them home with him and read them immediately and with great care. On the 6th of June, seven days afterwards and after I had written my supplementary letter, he wrote: "I now understand the case of your clients." He suggested no difficulty or objection whatever in the case until after he got down on the ground. Then his very first letter indicates that he could not see anything in the case at all. From that time on he could not see anything in the case. He sends to me three questions which, as my printed letter shows, I submitted to Mr. Lord. I wrote a response which Mr. Lord, as counsel, advised me, covered the whole case. Still he could not see anything in it. At the same time he was willing to suppose that there was something in it; and he repeatedly suggested that we send somebody down there. At a later day I shall have something to say in regard to sending somebody down there. This was what amazed and confounded my clients and my counsel. They could not understand (particularly the counsel) how General Hurlbut, as a lawyer, was unable to see anything in this case. Mr. Boutwell found a perfect case; Ex-Senator Eaton found a perfect case; Mr. Lord found a perfect case; Mr. Christiancy found a perfect case; every lawyer who went through the papers found a perfect case; General Butler found a case which he says is absolutely impregnable. Mr. Hurlbut is the only lawyer who has had any difficulty in finding a case.

Mr. RICE. These other lawyers were all paid, were they not, to find a perfect case?

The WITNESS. I do not understand the drift of that question. I do not understand why a question should be put that implies that General Butler or Mr. Lord or Mr. Boutwell would find a case for pay and would certify to it professionally.

Mr. RICE. They were your feed counsel?

The WITNESS. They were feed counsel.

Mr. RICE. Have you never heard of any lawyer not feed by you who failed to find anything in the case?

The WITNESS. I have never heard of any lawyer who went through these papers and failed to find a case. There may be hundreds of them, but I have never heard of one. The thing that completely confounded us was that all this while, after General Hurlbut went down there, he could find nothing in the case, and at the same time he was ready, on certain conditions, to help to push it forward. One condition was that the order must come from Washington, and the other was that he must have somebody there to co-operate with him.

Mr. RICE. Is not the meaning of his letter that he declines to do anything in the matter unless he has an order from the government to do it; and does he not simply suggest that, if you want to protect your interests down there, you had better send somebody to look after them?

The WITNESS. Yes; and each of the suggestions, taken by itself, is one of the most proper and innocent things in the world; but taken in connection with two facts—first, that he inserts himself absolutely between us and President Calderon in order to delay, if not to defeat, our attempt to treat with the Peruvian Government, and, second, that he was not able to find anything in the case after he got down there, while in May he had found it perfect, and in June found no fault with it—these facts, I say, made a most profound impression, not on my mind alone, but on that of every gentleman associated with me and with whom I consulted in the matter.

Mr. RICE. You state that he put himself between you and the Calderon Government. Have you any other evidence of that than what you have stated?

The WITNESS. None that is not included under that general head. There are some specifications which I may state at a later date.

Mr. RICE. Have you answered my question as fully as you desire?

The WITNESS. I have outlined the facts as they lie in my mind. It does not occur to me to suggest further details at present. I will state this third point: When Mr. Blaine sent me his letter of December 3, and I then for the first time was made aware that somebody in or about the State Department was, or at least professed to be, shocked by the letter of June 2 which I had sent to General Hurlbut, the question that arose in my mind, and which was repeated to me by all my associates, was: if General Hurlbut understood that letter to be a suggestion of an improper overture to him, it is incredible that he not only should have retained it in silence through all these months, but that he should have continued a correspondence with me in which no allusion or suggestion is made that anything improper had been done by me. That was a third point which impressed itself deeply on our minds, and the impression on my own mind was this: either General Hurlbut is not acting in good faith in professing now to think that this is a corrupt overture, or else he all the time understood it as a corrupt overture, and hoped that when we sent a man to Lima he might be sent there with instructions enabling him to give effect corruptly to that proposition. We seemed shut up to those two alternatives.

Mr. RICE. As I understand, you have now answered my question fully, so far as Mr. Hurlbut is concerned. Now I ask you what you have to support the statement which

you made in regard to "his colleague, the late Secretary of State." In the first place, have you any correspondence from Mr. Blaine which has not been already published?

The WITNESS. I have a letter here addressed to Mr. Walker Blaine, which has not been printed, and which, in chronological order, is prior to the letter to James G. Blaine.

The letter was produced and read as follows:

"[Personal.]

"AUGUST 9, 1881.

"Hon. WALKER BLAINE,

"Washington, D. C.:

"MY DEAR SIR: Your favor 28th ultimo was duly received, and the further advices therein promised will doubtless arrive in due course.

"The tenor of your letter, confirming the personal impression received at our chance meeting, induces this purely personal note.

"I am charged with the management of a great interest; an interest destined to possibilities, from the mere magnitude of which I am accustomed to see men of affairs shrink. Were I capable of affectation, I could affect a confession of * * * *. I seek aid on every side as instinctively as one panting seeks air. Of high and generous aid I cannot find too much.

"I do not seek aid to accomplish a determined result; I can see my way straight as the arrow flies to that. But infinitely more important than the result, to my mind, is the method—the long and complex series of methods that must be chosen out of many alternatives. Here I want help—the help of wise counsel; above all else, the wise counsel that will hold me back from mistakes.

"My conferences with the Secretary of State gave me a large satisfaction. The broad and well-stored mind, the high and aspiring ideals, the instant and comprehensive grasp of all themes with equal and familiar ease refreshed me as so many wines, and I came away more than content.

"If you will read my note to the Secretary of July 28 you will see how perfectly the dispatches sent [as I am told] on the 2d of August covered all the wish I expressed.

"If Mr. Elmore [who, I am told, will soon deliver to the department his credentials as minister] has a wise instinct, or is wisely advised, he will come to me at once, and negotiations will, I hope, result to the content of all parties who are content with equal justice and the 'greatest good to the greatest number.'

"In such case my original plan will be realized, and neither the department nor the President will be asked to take any further step in the premises as to either claim. So far from having taken any interest in this claim in special reliance or with a leading intent to lean upon governmental aid, every plan, choice, and expectation lay in the opposite direction; and if Mr. Elmore had been early wise not even what the department has already done would have been necessary.

"All men, however, are not born wise, and the further possible need of executive co-operation we are in prudence bound to conditionally anticipate and to provide for.

"My conferences with the Secretary made me conscious of the relative disadvantage an attorney may be subject to in discussions of state questions with a statesman. And this consciousness turns me to you who as at once an attorney and a statesman may interpret for me my meaning to the Secretary in terms he will not mistake, and again may make plain to me in attorney's talk what I do not directly comprehend.

"If it shall become necessary to adjudicate the right of the successors to Cochet's title in the department, the Secretary will preside judicially, and, as in every like hearing, scarcely less of the result will depend upon the manner in which the facts are presented and the law discussed than upon the facts and the law in actual existence; and in such case a professional brief submitted to a jurist not also at home among professional briefs might hinder quite as much as it should help.

"Reflection upon this imperfection of adjustment, due altogether to the narrowness of habitually professional modes of thought and idioms of phrase, deepens my hesitation to proceed with the preparation of my brief, and inclines me rather towards a statement, and further inclines me to suspend all work upon it until I have clearer light.

"Senator Blair has kindly aided me, and his aid has been great; so great as to deepen my desire and to heighten my expectation for more. His intimate acquaintance with the Secretary has enabled him to interpret to me what I could not alone understand, and I am sure that you could supplement that aid with help which you alone are able to render.

"I do not hesitate to apply to you in the premises, because if the responsibility put upon me, the mere advocate, be great, far greater is the burden of the judge whose word must be final, and who by erring on either hand in such a case as this must do not only an irreparable but an immeasurable injury.

* One line of letter-press copy here is illegible.

"I come to you, therefore, in the character in which you sit—eminently an *amicus curial*—and ask your aid solely in that character, to the sole end that the court may not fail, if judgment shall be asked, to judge justly.

"In no sense do I look to you to aid my clients *against* other parties; I need no such aid. While the department becomes in such cases *quasi* a court, and its head *quasi* a judge, many of the limitations hedging a mere court and a mere judge are absent. The Secretary sits more as a sovereign than as a judge, and to a degree he is also *ex necessitate officii* an advocate as well. Given a *prima facie* right of a clearly American citizen, and it is a prime function of his office to become presumptively the official helper of the claimant. So I understand the law and the practice. It is my own choice, however, to lean chiefly to the judicial ideal, and to ask only such aid as original equity compels every judge sitting in equity to decree.

"I had no thought to write at such length; my intent was to talk this when next we meet, and the sole intent of what was to have been a brief note was to ask when and where I can talk with you with a view to some such co-operation as I have hinted at, or its equivalent in any better form.

"Very truly, yours,

"J. R. SHIPHERD."

Mr. RICE. Did you receive any answer to that letter?

The WITNESS. No, sir, except a verbal answer. An intimation came to me through Senator Blair.

Mr. RICE. No matter, if Mr. Walker Blaine did not send you an answer.

The WITNESS. I had no written answer.

Mr. RICE. And you had no oral answer from him to you directly?

The WITNESS. Not naked and direct. I received an answer which I supposed came from him; but it was not nakedly stated as coming directly from him.

Mr. RICE. Who brought you that answer?

The WITNESS. Senator Blair.

Mr. RICE. State it.

The WITNESS. Senator Blair remarked to me, a few days after this letter was (as I supposed) received, that the Secretary had suggested to him that he wished I would not correspond in relation to this matter, or negotiate in relation to it, with any of his assistants in the State Department. I understood that intimation to be a reply to this letter. It was the only reply that I received, and I conformed myself to the suggestion thereafter.

Mr. RICE. And Mr. Walker Blaine never took any notice of it in any other way than that?

The WITNESS. No, sir.

Adjourned till to-morrow.

WASHINGTON, April 8, 1882.

The committee met at 10.30 a. m.

JACOB R. SHIPHERD recalled and further examined.

By Mr. RICE:

Question. Mr. Shipherd, we ended the examination last evening with your production of a letter from Mr. Walker Blaine, which was read, and a few questions were asked afterwards. I will ask you now whether you have any other correspondence with Mr. Walker Blaine than that which you have exhibited to the committee?—Answer. I have not.

Q. Or whether you had any other conversations with him than the one which was had at the Secretary's house?—A. Yes, sir; I had a later conversation with him.

Q. At what time was that later conversation, and where?—A. It was at his office in the State Department, and I should say, approximately, in November last.

Q. Who was present?—A. Mr. Trescot was present part of the time. Will the examiner indulge me a moment? I asked yesterday in regard to the admission of certain exhibits that were tendered by me to the committee two days ago, and I understood the examiner to say that he would himself bring that matter directly up.

Mr. RICE. To what do you refer?

The WITNESS. The exhibits that I tendered two days ago. I understood you to say that you would yourself bring that matter directly up soon, and as we have passed the connected circumstances, I ask your attention to it now.

Mr. RICE. What are they—newspaper publications?

The WITNESS. They are newspaper publications.

Mr. RICE. In regard to General Hurlbut?

The WITNESS. They represent the current allegations which influenced my judgment in respect to General Hurlbut.

Mr. RICE. Publications relating to that case of Clark *vs.* The United States and matters therein contained?

The WITNESS. Yes, sir. This paper purports to be, and I have supposed it to be, an accurate transcript from the records of the War Department of documents on file there. It was the official character of these statements that especially impressed me.

Mr. RICE. In view of the extraordinary statement which you made here yesterday, I, while conducting the examination, allowed you to go outside of the rule of testimony and to put in certain statements which you have heard read and made to you, in order that you might have the utmost opportunity to justify what you had said in regard to General Hurlbut's connection with this matter. I do not myself see how transactions that occurred years ago, allegations in regard to which are now found in newspapers and are otherwise unauthenticated, are competent testimony in this hearing. So far as I am an examiner, therefore, I shall not ask you in regard to them. I do not desire myself to enter upon any field of investigation outside of that which is prescribed for the committee, and after having yesterday, for the reason I have stated, permitted the examination to take a wider latitude, I do not now intend to go outside that field of inquiry which you as a lawyer know to be pertinent and competent in this investigation. We are not to receive hearsay testimony; we are not to receive unauthenticated testimony, and it does not seem to me that this paper which you offer is competent here. If any other member of the committee thinks it is, he will undoubtedly ask you in regard to it, and if no member of the committee thinks it is competent, you can tender it, and the question of its admission will then be considered by the committee. But after the statement you have made in regard to it, I do not consider it a kind of testimony that I should, as a lawyer, feel justified in calling out.

The CHAIRMAN. It seems to me, if I may be allowed to make a suggestion, that the real point and purpose of this examination which we have been instructed by the House to conduct, is to ascertain whether Minister Hurlbut or any other official of the government was guilty of any corrupt act in connection with the Peruvian Company, and that we will hardly be justified in going back into an electioneering canvass for hearsay testimony to establish that fact, either pro or con. I can hardly see how this kind of testimony can be admissible in this investigation. An inquiry of the character that would be opened up by its admission would of course be almost interminable; it would run into all manner of collateral issues, in fact, into the entire past life of Mr. Hurlbut.

Mr. BLOUNT. I do not think that in an investigation of this kind we can be held down to the rules of testimony as they are applied in courts, but I am opposed to going into this proposed inquiry on a different ground. The object Mr. Shipherd has in offering this testimony is to show the reasons that actuated him in writing that letter of June 2, and it seems to me that that matter is not very important now. I think it has been gone into far enough, and, as the chairman has suggested, to open up an inquiry into the whole past life of General Hurlbut would make this matter interminable. Mr. Shipherd seems to have some feeling toward General Hurlbut, which may or may not be natural or just; but, however that may be, it is a matter with which we have nothing to do.

Mr. BELMONT. I think we have already allowed Mr. Shipherd sufficient latitude to show his motive in writing that letter.

Mr. RICE. If my friend, Mr. Belmont, will allow me, I concur fully in what he has just said. In conducting the examination yesterday I acquiesced in an extreme liberty to the witness, and the chairman before that had also acquiesced and allowed the witness to state what had influenced his mind in the matter of writing that letter to General Hurlbut. He has made his statement on that subject and has referred us to a case in the United States Reports, where the matter is sufficiently suggested to show us the character and the actual nature of it and enable us to see how it may have influenced his mind. Now, for us to go into an investigation of the truth or falsity of the charges therein contained would, as the chairman remarks, lead to an interminable investigation, and one which, in my judgment, it is not competent for us to enter upon. I therefore concur fully in what my friend, Mr. Belmont, has said, that the witness has already shown us what he referred to as having influenced his mind, and that we have gone far enough in that direction.

The CHAIRMAN. I suppose the examination was conducted yesterday on this theory, which I judge is the correct one, that if there is any letter or document subsequent to the 2d of June (if that was the date) tending to throw light upon General Hurlbut's connection with the Peruvian Company or his intercourse with Mr. Shipherd, the committee would deem it proper to admit that, however wide the latitude might be; but to go into these anterior matters would not be, in my judgment, permissible.

The WITNESS. If the committee please, recurring to a habit common in courts, I will speak as counsel for the witness rather than as a witness. In that capacity of counsel perhaps it is more proper that I should speak in this instance. The *quasi* issue presented for the inquiry and adjudication of the committee, as I understand it, concerns itself with two points, and two only; inquiry first as to the missing letters, and, second, as to the question whether any official or minister of the United States

has been improperly connected with the Peruvian Company or the *Crédit Industriel*. Now, when the correspondence which led the House, as I understand it, to direct this committee to make this investigation was published, especially the correspondence which included the letter of the Secretary of State of December 3, in which he adjudicated finally that I had been guilty of attempting to bribe a minister of the United States, it arrested the attention of the House and led, as I understand it, to this inquiry. In that view, therefore, I am, in fact, arraigned here. I am here in two characters—as a witness, and, to some extent, as a defendant; I have been so treated by the committee. I have been interrogated very sharply as to my motives in writing that letter of June 2 and as to the views which led me to write it. In answer to questions asked by the committee, and not otherwise, I have testified. I have produced here printed statements which represent, as I have said, some of the facts which led me to write that letter—current allegations, undenied, which were specially brought to my attention because of my residence and any acquaintance with the parties.

Now, if I am not to be permitted to put these facts into the record, then I am thrown back upon the very position which I understood Mr. Rice to say he could not allow me to hold. I understood him to say, expressly, that it was not proper for this committee to listen to any statements in regard to mere impressions made upon my mind. Attention has been called to that fact in the public journals, and it has been there said, “If Shipherd has nothing but his impressions to present, if he has no facts to show which justified those impressions, then, indeed, the committee are right in discarding his impressions and in practically discarding his whole explanation.” I have been permitted to refer to a case in the United States Supreme Court. I cannot see why these facts, as current facts influencing my mind, have not the same status in law before this committee that the report of that case in the Supreme Court has. To be sure, the committee, I suppose, would defer to an adjudication by the Supreme Court, as, to a certain extent, a settled fact, but I have only cited that as one of the current allegations that influenced my mind, and upon that footing it does seem to me that these statements purporting to be official records of the War Department ought to go in, and I have been advised that the committee probably would not hesitate, in ordinary justice to me, as a quasi defendant, to admit them into the record.

MR. RICE. You offer them for the purpose of showing the strength of the impressions and the grounds for the impressions which you entertained with regard to Mr. Hurlbut.

THE WITNESS. If the examiner please, I offer them as facts which influenced my mind.

MR. RICE. You say you believed Mr. Hurlbut was a purchasable man, and that because of that belief you wrote the letter to him which you did write; that is your statement, with the modifications as you have made them here in your testimony.

THE WITNESS. I said that I was led to write the letter that I did write because of facts of which these are examples, and I offer these because they are in print and because they were in print years ago, and because for all these years they had lain in my mind and had created there a settled judgment in regard to General Hurlbut's character long before this matter ever came up.

MR. BLOUNT. Do they relate to but one transaction, of which there is a record in the War Department? The difficulty in the minds of the committee on this point seems to be that you are starting out on a general assault along the whole career of Mr. Hurlbut. Are we to understand that you want to go into a single transaction which is disclosed by the records of the War Department, or is this only part of a general plan of assailing his whole life?

THE WITNESS. I have no intention of assailing him, and I have nothing further of this kind to offer. I offer this as exemplary, not as complete.

MR. BLOUNT here asked for the paper and inspected it.

THE CHAIRMAN. I understand you to say, Mr. Shipherd, that this document was circulated in some election contest.

THE WITNESS. Yes, sir; in General Hurlbut's district.

MR. BLOUNT (after examining the paper). I do not know but that this might be admitted without leading to anything further.

MR. BELMONT. My reason for objecting to it was that we had already admitted sufficient to show Mr. Shipherd's motive in writing to Minister Hurlbut, and the ground of his belief that the minister was purchasable.

MR. BLOUNT. I agree to that, but this was a public matter anyway.

MR. WILSON. What is to be accomplished by the admission of that character of evidence?

MR. BLOUNT. I do not think there is anything to be accomplished.

MR. WILSON. There is a well-defined rule in these matters. Any evidence that tends to establish or to refute the charge in issue is legitimate. Any evidence the tendency of which is to establish the issue on one side or to refute it on the other is competent evidence. Now, it is alleged here by this resolution of inquiry that certain overtures were made by Mr. Shipherd, the witness here, to General Hurlbut, and his letter has

been produced. That letter, with his explanation thus far, gives the history of that transaction.

* This paper which is now offered does not tend to show that he did or that he did not write that letter. It tends to show, as I understand, the reasons that he had for writing it. What we desire to know is whether the fact existed, whether the thing was done, and, if it was done, the immediate circumstances surrounding the transaction. We yesterday opened the door very wide and admitted a great deal of evidence that would not have been pertinent and that was not pertinent, as the record will show, but I made no objection and I do not object now. I think, however, that before we embark on this unlimited sea of investigation we ought to ascertain how far we may be led on in this direction, and how far our record is likely to be encumbered with matter that is not pertinent to the inquiry that we have been directed to make. And can any possible good come from the character of testimony that we have been receiving? Mr. Shipherd has been allowed a wide latitude in explaining the situation as he understands it, and all the surroundings, and whilst we are all disposed to accommodate him as far as may be proper in that regard, is there to be no check to this mass of collateral testimony? As I have already observed, anything that tends to establish the issue on one side or to refute it on the other, anything that may be auxiliary, may be admitted, but I certainly think we ought not to go beyond these limits.

Mr. BLOUNT. I think the testimony has gone far enough on this line. This paper which is now offered is simply an official paper, not a campaign circular, and my idea in agreeing to let it go in was to cut short this discussion. This is not at all a private matter in the hands of the witness or within his control. It is a matter of official record.

Mr. LORD. There is no evidence here that it is official.

Mr. BELMONT. What is the date of the publication?

The WITNESS. November 3, 1876.

Mr. LORD. Mr. Wilson inquires what purpose the admission of this evidence can serve. It is very clear that the witness desires to show by this paper that he had probable cause to believe that Mr. Hurlbut was either a corrupt or a corruptible man, and hence the writing of the letter of the 2d of June. That is evidently the purpose of the witness in offering this letter. Now, it is for the committee to decide whether they will admit the paper to show the working of the mind of the witness, and as going to show what tended to produce the impressions upon his mind under which he wrote that letter.

The CHAIRMAN. The object, Mr. Shipherd, in putting the question to you was to ascertain your motive in making the proposition contained in your letter to Minister Hurlbut. You were asked if you believed that he was purchasable. You replied that you did. Now, if you did believe him purchasable, and acted upon that belief as a fact, does it make any difference as to your motive, whether you were correct or mistaken in that opinion or belief?

The WITNESS. It makes this infinite difference, sir. The point that I make before this committee is that I stood, in writing that letter, solely on the defensive; that I never sought to influence him, never intended to seek to influence him to do anything for us officially, but only to prevent him from doing something against us, and that I therefore made a very guarded and very peculiar suggestion; that that suggestion I was led to make by a public record and public reputation, for the accuracy of which I do not pretend to be responsible. I say that there was a public reputation, notorious, and I may say universal, concerning General Hurlbut, which led me to feel that he was a "striker," and that I should have to make some suggestion to him in a defensive way to prevent him from attacking us at the outset. Now, it has been suggested, and I think with great propriety, in leading journals, that "if Shipherd comes up and merely states this as a general fact, and presents no special facts existing at the time to justify such a general representation, the committee have a right to discard all his declarations in that regard." I therefore present these records as *facts*.

The CHAIRMAN. If I understand your purpose in addressing General Hurlbut it was to in some way bias his official action by a direct appeal to his personal interests. You believed that could be done because you believed he was a purchasable man. Now, supposing he had been, would that change the character of your proposition, its morality or its propriety, or, if it had turned out that he was not purchasable, would that have relieved your proposition of its real character and intent?

The WITNESS. I understand, Mr. Chairman, that the moral character of an act depends entirely upon the subjective conditions of the mind of the actor, and that it makes no difference in that respect whether he is mistaken or not.

The CHAIRMAN. Was it not your purpose to bias Minister Hurlbut's official action, if possible, by an appeal to his personal interests?

The WITNESS. It was my intent to prevent him, if I could, from improper official action against us, and to that extent (if the phrase is desired to be used) to bias his official action.

The CHAIRMAN. By an appeal to his personal interests?

The WITNESS. By an appeal to his interest, in the precise terms and under the precise limitations which I have already stated.

Mr. BLOUNT. Upon examining this paper a little more closely, it appears on one side of it that there were charges preferred by a commission against General Hurlbut, and there seems to be on the other a contradiction by a prominent gentleman. An issue is therefore made as to General Hurlbut's conduct. He is dead and cannot take care of his reputation, and I do not think that this would throw any light at all upon the matter we are investigating, and therefore I am not willing to indulge the witness by admitting it. If we accept these charges against General Hurlbut as part of our record, it seems to me that decency and justice would require us to take up the other side and investigate the matter fully. But I do not understand that we are here accusing General Hurlbut or any one else. We are trying to get certain information for the House of Representatives, and this would not, in my judgment, aid us in that respect. In fact, the very matters herein contained have already been referred to by Mr. Shipherd, and I do not see why we should permit him to elaborate them further. I therefore move that the testimony be not admitted.

The CHAIRMAN. Before putting the motion I will add, that anything which tends to show that Minister Hurlbut was influenced subsequently by the proposition made by the witness will be, of course, admitted.

Mr. BLOUNT. I am in favor of the widest latitude in the admission of evidence which will really throw light upon the subject we are investigating.

Mr. RICE. We shall, of course, be ready to admit any evidence tending to show that General Hurlbut was influenced by this proposition, or to show that he was corruptly influenced in any other manner.

Mr. BELMONT. We have already heard Mr. Shipherd's explanation of his motive in writing that letter. Another reason I have for objecting to this mode of proceeding is that it wastes our time. We have more to examine into than the mere question of the attempt to influence General Hurlbut's action, a great deal more, and the sooner we limit our inquiry to the important points the better.

The CHAIRMAN. Certainly, that is only an incident of our investigation; if no other member of the committee desires to make any remarks the Chair will put the question on the motion of Mr. Blount.

Mr. WILSON. I suggest that we leave that question open for the present, and proceed with the examination of Mr. Shipherd, and if the relevancy of this evidence which he offers shall appear before the examination is concluded we can then admit it.

Mr. BLOUNT. There is nothing to prevent our reopening this question if we think proper hereafter, but the question is now before us for action, and I do not see any reason for postponing it.

Mr. DEUSTER. I am inclined to favor Mr. Wilson's suggestion. It may injure the character of Minister Hurlbut more to exclude this evidence than to admit it.

Mr. BLOUNT. I am very positive about my own position in this matter, and I shall ask for a vote on my motion. I am willing to give all reasonable latitude for the introduction of any evidence that will throw light upon the issue that we are investigating, but I am not willing to occupy time in receiving, as evidence, an attack made many years ago upon a man who is now dead and unable to defend himself.

Mr. WILSON. I move to suspend the question for the time being.

The WITNESS. If the committee will allow me one final word, speaking as counsel, the demand served upon me by the committee in the name of the House was a most extraordinarily broad demand. It compelled me to disclose unqualifiedly and unconditionally, everything, public and private, relating to the Peruvian Company. Now I may be mistaken, but I am clearly of the opinion that after such a demand upon me, after the disposition that has been shown in the press, in the House, and, as I understand, also in the committee, to compel me to make the broadest possible disclosure, if a quasi or purported official record pertaining to General Hurlbut, which I have testified had a controlling influence on my mind in regard to a most important act in this record, is to be excluded from the testimony before the committee, it seems to me that that exclusion may, as has been suggested, injure General Hurlbut and his friends a great deal more than it will help them. I make this suggestion as counsel, not as witness.

Mr. BELMONT. We have already gone over that whole ground a number of times. I have been looking through the testimony, and I find a great many questions and answers in regard to your motives in writing that letter to General Hurlbut, and I think we have had enough testimony on that point.

After some further discussion among the members of the committee, Mr. Blount's motion was temporarily laid on the table.

Mr. RICE said that having occupied a considerable time in his examination of the witness, and recognizing the fact that other members of the committee were desirous of pursuing the examination in other directions, and also the fact that the rule adopted as to the order of examination would, if adhered to, postpone any examination by

Democratic members of the committee until all the Republican members had examined, he intended, after putting a few more questions in relation to what was alleged to have occurred at the State Department, to suspend his examination and turn the witness over, with the assent of the committee, to some of the Democratic members, especially to Mr. Belmont, who, although he had introduced the resolution under which the inquiry was ordered, had not yet had an opportunity to pursue the examination in his own way. Mr. Rice also suggested a good rule, that the witness should be examined by members of the majority and of the minority alternately.

Mr. BELMONT said that he was perfectly willing to wait for his turn under the rule, already adopted, and that, so far as he was concerned, he preferred that the committee should adhere to the rule.

Mr. LORD remarked he had expected to come next in conducting the examination, but that he would cheerfully agree to the suggestion just made by Mr. Rice, feeling that there would be eminent propriety in having the examination alternate between the majority and the minority members of the committee.

The CHAIRMAN said that if no objection was made he would follow the course suggested by Mr. Rice, calling next upon a member of the minority to conduct the examination, then upon a member of the majority, and so on.

Mr. BLOUNT did not think that the order in which members of the committee examined the witness made much difference, but preferred, as the rule adopted had been followed so far, that it should be adhered to.

The CHAIRMAN. Any way that the minority suggest.

The examination of the witness was then continued as follows :

By Mr. RICE :

Q. You have letters from Secretary Blaine which are not included in the printed matter before the committee, I understand ?—A. I have not, sir.

Q. Then you have no other letters from him ?—A. The entire correspondence between Secretary Blaine and myself, so far as I have identified it, appears to be printed in the volume, except that the letter which was intended as my answer to Mr. Blaine's letter of December 3 is not printed here. It was addressed to Governor Boutwell, to be by him delivered to the Secretary of State *ex officio* at the proper time.

Q. Do you desire to put that letter in as your intended answer to Mr. Blaine's letter of December 3 ? If so, you may produce it.—A. Yes, sir. [Producing it.] This is a copy of my answer to Secretary Blaine's letter of December 3.

Q. You say you intended that letter for Mr. Blaine ?—A. The letter of Mr. Blaine to me was written by him as Secretary of State. This letter was written to my representative near the Secretary of State, to be by him delivered to the Secretary of State *ex officio* in due course.

By the CHAIRMAN :

Q. With the intention that it should be shown to Mr. Blaine, or communicated to him ?—A. With the expectation that it would be shown to the Secretary of State, whether Mr. Blaine or Mr. Frelinghuysen, or whoever he might be. We did not know at that time who would be the Secretary.

The letter was read by the clerk, as follows :

“[Confidential.]

“DECEMBER 10, 1881.

“MY DEAR GOVERNOR: There may be somewhere a wickedder man than James G. Blaine. Upon this as a proposition I do not now either express or imply an opinion. I only submit for your professional information a copy of an amazing secret, dated at the Department of State, attested by the unmistakable autograph of the head of the Cabinet, and addressed to me through the post-office.

“In connection with its reading, please consider the following notorious facts :

“1. That our printed papers reached the President May 23 ; that 5 days later Hurlbut telegraphed me from Washington that he was coming to New York to see me ; that we met at the Fifth Avenue Hotel on the 30th, and that he then and there told me that he had not himself seen any of my papers except the draft for a possible agreement with Peru, but that he was ‘*sent to tell*’ me that the President considered my *prima facie* case as strong both in law and equity as a case could well be made, and that if the proofs should sustain the material allegations, and I would organize a company entitled to the confidence of the government, I should have unhesitating Executive support, &c. This conversation I rehearsed to Mr. Blaine in July, in Senator Blair's presence, and his only comment was a nod of acquiescence.

“At the close of this conversation (with Hurlbut) he volunteered me his Illinois address, asking me to write him fully during the 20 days he should be completing his preparations for departure, eagerly took the full set of papers I offered him, with the remark that he should read them with great interest and critical attention, and promised to come to my office on his return from the West and prior to his sailing—but never did.

"2. A few days later I wrote him a sixteen-page letter giving an unreserved inside view of all our plans, and the names of 40 or 50 capitalists whose co-operation would be invited. A copy of this letter was *mailed to the President direct* at the same moment the original was sent to Hurlbut, and Mr. Blaine at our first interview mentioned his receipt of it in due course.

"3. Every allegation in the Secretary's letter concerning the alleged impropriety of correspondence between me and Hurlbut and its discussion between the Secretary and myself, is an invention pure and simple, and worse than inexcusable.

"Such a suggestion was never made by either of us at any interview. Totally on the contrary, I never met him without telling him what I had recently written and was about to write to Hurlbut and what Hurlbut's responses were, and there was never by word or manner a suggestion of criticism upon either the fact or the tenor of the correspondence.

"From first to last our plans have been presented and discussed, both with the Secretary and with Hurlbut, chiefly as a possible *basis for an adjustment of the international difficulty*—and in this light the new suggestion of impropriety must be viewed to appreciate all the exquisiteness of its absurdity.

"4. In both the first and the second interviews with the Secretary he dwelt at length and with emphasis upon the fact that it would be alike his duty and his pleasure to favor any legitimate American scheme, such as ours, whereas he had been unable to help the French syndicate because it was not American. He added that he had pointed out this rival distinction to Suarez as vital, and had suggested to him that if he even had Americans interested *with* him the Department might help him, &c., and thereupon suggested to me that I might avail myself of the co-operation of this syndicate by putting my interests at the front.

"5. The statement that he told me he would instruct Hurlbut to examine and report on this claim is another unqualified error. Nothing of the kind was ever suggested between us at any interview. At the close of the first interview he asked what I wanted him to do, and I answered, 'Only this: Instruct General Hurlbut to notify Chili and Peru that the Landreau claim must be paid and the Cochet claim adjudicated before any terms of settlement which might affect the rights of the owners of these claims are agreed on;' and his instant answer was, *in hæc verba*, 'That you will get.'

"6. The malicious insinuation of attempted bribery crowns the work and keys the arch.

"The suggestion I made was, as the text itself will show, qualified beyond all mistake.

"The entire letter was in these words:

"JUNE 2, 1881.

"DEAR SIR: Of course we shall be glad to have yourself—*so far as it may be entirely proper*—and your personal friends, interested with us, and I will reserve, say, \$250,000 of the pool-stock subject to your advice. Terms of *payment* can suit individual convenience.

"Very respectfully,

"JACOB R. SHIPHERD.

"To Hon. S. A. HURLBUT,

"Belvidere, Ill.'

"The underscoring is explanatory—not in the original—and at least this suggestion I was emphatically advised was absolutely necessary to prevent the model minister from opposing us secretly, if not openly, no matter what his instructions from Washington might be. In view of what followed, the only error from the worldly-view point I seem to have made was in confining my suggestion within commercial limits. The offer was to *sell* stock, and he seems to have had no money. At the very first interview I had with the Secretary I quoted this letter to him as evidence of the fact that I had *not* bought his minister and had not offered to buy him, and not the slightest suggestion of criticism then or thereafter escaped him, until now. On the contrary, when I asked his attention to the charges of gross corruption, with which all Lima was ringing, a jocular allusion by a gentleman present to my dullness in only offering to sell stock within proper limits to him or his friends, brought a hearty laughing affirmance from the Secretary himself, who dismissed all the charges with the cheering assurance that we might 'depend that Steve would have some plausible explanation of them all ready.'

"7. Upon the merely vulgar impudence of the letter, no gentleman of ordinary self-respect could condescend, of course, to comment. A prominent member of the diplomatic corps is quoted to me as authority for the declaration that the corps is agreed that Mr. Blaine has played double with them all. I was introduced to him by Senator Blair, who *upon Mr. Blaine's advice* became one of my counsel, and shared to the uttermost in every 'delusion' now railed at, knew every inner plan I formed, and approved every step I took. Every syllable of condemnation implied in this letter is

equally applicable to this Senator, and it is thus the great commoner stands by his friends.

"I am sorry to have troubled you at such length, but did not see how to write less fully. To you we look to introduce us to the new Secretary, whomever he may be, and, as the retiring minister has imbedded in the records of the department this letter, you may be called on at the first moment to explain it; I need not, therefore, I trust, apologize for the frankness which is not only proper but due from client to counsel.

"Favor me with such suggestions as occur to you in the premises, and believe me always,

"Faithfully, yours,

"JACOB R. SHIPHERD,
"President.

"To Hon. GEORGE S. BOUTWELL,
"Washington, D. C.

"P. S.—Since this was written, and before signature, Senator Eaton came in and I read it to him with care for criticism. His only comment was:

"Do not change a word, and if you have occasion to do so, refer critics to me."

Q. You have stated in your testimony that you had interviews with Mr. Blaine on October 14, November 3, and November 5, in addition to the ones at his house in July to which you have testified, and that those were the only interviews you had with him. Having given us all the correspondence between yourself and Secretary Blaine, and this letter in addition which you have stated was intended as a part of that correspondence in a certain way, will you now give us the circumstances of your conversation with him on October 14, and detail that conversation. Where was it; what was it; how did it come about, and who were present?—A. If the examiner please, I have not intended to state that those dates were the only dates at which I had interviews with the Secretary of State, but that they were approximate dates.

Mr. RICE. (Referring to the testimony.) You said that "these may vary twenty-four hours from the actual time."

The WITNESS. Yes. I do not remember the precise phraseology. From the memoranda which I preserved, and which are not quite complete, those are approximately the dates at which I had interviews, and I think they represent (with probably a single exception) all the interviews that I had with the Secretary. My impression is that I was with him on the evening of October 13, and that I was with him again at the State Department on October 14. That recollection is connected with some data which will appear in due course. My recollection concerning the interview of October 14 seems at the moment to be overlaid in my memory with occurrences which took place on or about the 3d of November, and while I shall endeavor to be as precise as I can, it is just possible that some parts of those two conversations may become intermixed as to dates. When I received General Hurlbut's letter saying that he had received no such dispatches as I wrote him had been sent, I sent at once for Senator Blair. I sent for him for this reason. After the retainer of Senator Blair had been definitely arranged he said to me that he had had a full and very satisfactory conference with the Secretary of State, and that at that conference the Secretary had assured him—

Mr. RICE. (Interposing.) I call your attention to the fact that you are now entering upon a conversation which you had with Senator Blair as your counsel. You have heretofore declined to state your conversations with him. You of course recognize the fact that if you give details of the conversation you will open it up for cross-examination.

The WITNESS. I propose to state what Senator Blair, as my representative, did with the Secretary of State. I do not propose to enter generally either in a direct or an indirect way into all that may have passed between me and my counsel. I do not understand the committee to want that.

Q. Do you understand that you can give part of a conversation with Senator Blair and withhold the rest?—A. No, sir. I take it that the committee have a right to know what passed between me and the Secretary of State. Now, if Senator Blair acted as my agent and representative in negotiating with the Secretary of State, I suppose the committee are entitled to know (so far as I have any knowledge) what passed between me and the Secretary of State through the medium of my agent. That is my theory; if that is error we had better pause at this point.

Mr. RICE. The proper way would be to introduce your agent and have him testify himself.

The WITNESS. That, as to one side of it; but what my agent told me and what I instructed my agent is, I take it, one part at least of what passed between me and the Secretary of State.

Mr. RICE. I do not desire to introduce any technical objection to the testimony; I only call your attention to that point.

The CHAIRMAN. Mr. Shipherd has testified that it was his impression that he had interviews with the Secretary, first on the evening of the 13th, and then twice on the 14th. I mention this to keep the interviews in chronological order.

The WITNESS. I mean to confine myself in testifying now, as far as possible, to what in effect passed between me and the Secretary of State (whether directly or intermediately). In testifying to what passed intermediately, of course I can only testify to that part of it which came within my personal knowledge, and the committee will know how to supplement that testimony by calling another witness if they desire. Senator Blair told me that the Secretary of State had assured him that nothing going into, or going out of, or passing through the State Department which might affect our interests should be withheld from me; that the Secretary of State himself would personally communicate all the important facts to Senator Blair, to be by him communicated to me.

The CHAIRMAN. I would like to know when this conversation was in relation to your interviews of October 13 and 14.

The WITNESS. I should say that this statement of Senator Blair to me occurred some time in the early part of August. In connection with that, and I think at the very same interview, he said to me that very soon afterwards, within a few days (I think four or five days) after my interviews of July 25 and 26, the Secretary sent for him (Senator Blair), and read to him a draft of a dispatch to General Hurlbut intended to cover the ground which the Secretary had promised me should be covered. Senator Blair said that he suggested important amendments, and that the Secretary of State promptly made them. He then reminded the Secretary that I had requested that the substance of the instructions should be sent by cable. The Secretary said, "Certainly, if you wish that it shall be done." Two or three days later (as Senator Blair informed me), the Secretary again sent for him and read to him a finished draft according to the amendments suggested by Senator Blair for a dispatch to go by mail, and also read to him a dispatch of about one hundred words to go by cable. Senator Blair's comment to me was, "Shipherd, if you had written the dispatches yourself they could not have more completely covered the ground which you wish covered, than those dispatches cover it, especially the cable dispatch, for that was more incisive and explicit than the mail dispatch." This conversation was early in August.

By Mr. RICE:

Q. Do you know the date of the dispatch?—A. I will fix that in a moment. A few days afterward I saw the Senator again (he was frequently in New York, and frequently in my office). At the interview in which he reported his having heard these drafts read, I said to him, "Now, have those been sent?" "Why, certainly," said he, "they have been sent." "Well," I said, "excuse my anxiety; I certainly have no question as to the Secretary's good faith, but these matters are often left to subordinates. Will you be good enough to ascertain absolutely whether the dispatches have been sent?" He said, "Certainly I will." A few days later he told me that the Secretary said to him that both those dispatches had been sent without the change of a word, on the day that they were read to him, and that day was the second of August. Now, when General Hurlbut wrote to me that he had received no such dispatches as I had characterized in my letters, I sent immediately for Senator Blair. I said to him, "What does this mean? I have not seen these dispatches. I know nothing about them except what you have told me." He evinced a very lively interest in the matter, and said with some warmth, "This is a question for me to take care of. This touches my veracity or that of the Secretary of State. Either I have misrepresented to you or he has misrepresented to me that the dispatches were as I have characterized them to you and as you have characterized them to Hurlbut, and I will undertake to straighten this matter out." A little further on he suggested that I should come to Washington and that the dispatches should be shown to me. Pursuant to that conversation, and in this order of events, I came to Washington, arriving here on the 12th or the 13th of October. My recollection at the moment is vague in relation to what may have passed in the conversation between the Secretary and myself. I remember that I found him very much occupied, and that the interviews were relatively brief. But when Senator Blair suggested to him that General Hurlbut had written so and so, the Secretary said, "Why, I can satisfy Mr. Shipherd on that point very readily. Meet me to-morrow (that was, I think, the 14th) at twelve o'clock at the State Department, Mr. Shipherd, and you shall see the dispatches that were sent."

Q. Was that substantially all that took place between you at that interview?—A. This conversation took place at the Secretary's house either on the evening of the 13th or on the morning of the 14th of October. My present recollection is that these were two brief interviews; one in the evening, for perhaps an hour, and the other in the morning of much shorter duration, perhaps twenty minutes.

Q. Have you stated substantially all that took place in your first interview with Secretary Blaine?—A. No, sir; I will come to that in another connection. I wish now to pursue this talk in regard to the dispatches. I went to the department at 12 o'clock and found the Secretary there with letter-press copies of the dispatches ready. He read me the first dispatch of general instructions to General Hurlbut, dated June 15.

Q. The same that is printed here?—A. Yes, sir. He read that to me, and made

some comment to the effect that I would observe that there was a provision in that dispatch for some such possible intervention as we were suggesting, that there was a suggestion to Minister Hurlbut that if an opportunity should arise for facilitating negotiation between the two parties it should be improved. The Secretary commented on it in that way, saying: "You see that makes room for you," or something like that. He then read me the dispatch of August 4, which we had understood was dated and sent on the 2d. I noticed that the phraseology was narrower than would have satisfied me, and we discussed that a little. The Secretary said: "You told me that what you wanted was merely that they should be held, that the negotiations should be stayed for the time being, until you could deal directly with Peru. You told me that you did not want me to interfere specially for you just now, and this was designed to be in accordance with that idea. You see that I have notified Chili that if she is going to take guano she will have to take it subject to Landreau's lien, and she will be very slow to take it subject to the Landreau lien; and while the Cochet matter is not put prominently forward, you told me you did not want it put prominently forward." He made some comment to about this effect, to assure me that the intent which he understood to be in my mind, had been covered by this dispatch. I recognized the fact that it had been. I said, "Yes, Mr. Secretary; I don't care how it is brought about if matters are stayed there until we have an opportunity to deal directly with Peru, for, up to this time, our main reliance has been to come to an amicable agreement with Peru, which will result in settling the merits of this claim for the whole world." At the moment of finishing the second dispatch he looked at his watch, and said: "I have an engagement this moment at the Capitol; you must excuse me."

Q. At the Capitol?—A. Yes, sir; at the Capitol building. I think that was the time the French visitors were here. He laid the dispatches in my hands, and I said to him: "Mr. Secretary, may I copy the closing sentence of this dispatch?" He replied: "Oh, no; you must not copy anything; that would not be proper, but you may read it for your satisfaction." He left me, and I reread the last few pages of the second dispatch. I subsequently met Senator Blair and reported to him the substance of what had passed at the State Department. I do not think it was specially discussed. My present recollection is that this about covers what passed in regard to the dispatches here in Washington.

Q. Did you afterwards write to Minister Hurlbut that you had seen the dispatches, and that they were satisfactory to you?—A. Yes, sir; that appears in my letter.

Q. And the dispatches *were* satisfactory to you?—A. Yes, sir; with this exception: The Secretary having been called away thus abruptly, I was not shown the cable dispatch, and, indeed, there was no opportunity to ask him about it. He left almost in an instant. I had intended to ask for that, and had expected to see it, and was somewhat disappointed that I did not see it, but at that time, never doubting for a moment that it had been written and sent as I had been told, I did not push the inquiry. I understood the Secretary to say distinctly that the two dispatches which he read to me were all the mail dispatches which had been sent to Minister Hurlbut, and it was in pursuance of that intimation that I wrote to Minister Hurlbut that I had been shown all those dispatches.

Q. Who was present when you had this interview at the State Department?—A. No one except possibly a clerk writing at the other end of the room.

Q. Senator Blair was not there?—A. No, sir.

Q. You reported it to him, however, and you and he both were satisfied that there had been no breach of faith with you on the part of the Secretary?—A. Perfectly satisfied at that time. I was perfectly satisfied, and I understood him to be. He expressed a good deal of sensitiveness in the conversation following this interview as well as before in regard to the verification of his own representations to me, saying again, "This is my matter."

Q. By the way, you spoke of Senator Blair, in your testimony given here, as having attended you as your counsel in the first interview which you had with Secretary Blaine at his house, did you not?—A. I may have done so.

Q. That was the first time you saw Mr. Blaine?—A. The first time.

Q. You had no letters from Mr. Blaine on this subject then?—A. I think I had had none from him.

Q. And yet at that time Senator Blair was your counsel?—A. Well, I should say this with precision, as to the Senator's relation—

Q. I notice that in that letter which you wrote to Governor Boutwell you say that Senator Blair told you that Secretary Blaine advised him to be your counsel?—A. Yes, sir.

Q. He must have given that advice, then, prior to your first interview with him?—A. No, sir; I think he did not.

Q. And yet you say Senator Blair was your counsel at that time?—A. I will state precisely the facts, restating in part what I have already testified to. At the first interview with Senator Blair, when I asked him if he were open to a retainer as counsel in the matter, intimating a readiness to compensate him, he replied that under no

conceivable circumstances could he accept a retainer; and he gave the reason, that possibly the matter might in some form come before Congress, and, as he was a member of Congress, he must not by any inadvertence become personally interested in questions that might come before him for official action. We discussed that matter somewhat, he doing most of the talking, and then he said very energetically, "But it won't make a particle of difference in my readiness to help you. This is practically the commercial annexation of South America, if it succeeds. It is a great scheme," and so on; and then he went into a statement which implied that he took a very deep interest in it, and said, "I should consider it my duty as a Senator, in the interest of the whole country, to forward an enterprise which is so likely, in my judgment, to benefit the whole country. The same view will be taken of it by the Executive. You will need no political influence, no special help; it will be only necessary to have the facts laid before the Executive to secure their due consideration, and the facts will do the work." He talked in that vein, and then said something which led me to believe that I might rely upon his co-operation practically as counsel, but not as retained or paid counsel; that is, that he being an attorney in the matter, and having acquaintance with the Executive, would act for me as counsel, or might so act.

Q. As a volunteer counsel, an unpaid counsel?—A. A volunteer counsel, if you please.

Q. In a matter in which the whole people of the United States were largely interested?—A. Exactly. I looked upon it in that light, and if I referred to him as my counsel I meant that I looked upon him as a person who was performing for me without charge the offices of a counsel.

Q. When did he become your paid counsel?—A. I will go on to state that later.

Q. The date of the first conversation was before the first interview with the Secretary of State, was it not?—A. I should say it was somewhere about the 20th of July.

Q. In your office in New York, where he had come from New Hampshire to see you, at your request?—A. Yes, sir. He was introduced to me at my office by Ex-Senator Cragin. After the interview of July 25 and 26 the Senator said something to me with regard to the possibility of this case being disposed of absolutely in the State Department. I think he asked me what I thought the chances were, and I replied that it was impossible for me to judge, and suggested that if any question of that kind was rising in his mind he might well consult the Secretary of State. Subsequent to that he said to me that he had consulted the Secretary on that point and the matter had been very fully discussed between them, and the Secretary had assured him that, beyond any peradventure, the case would be entirely disposed of within the State Department and would not come before Congress in any form, and that there was, in his judgment, no impropriety in Senator Blair's accepting a retainer as counsel, and that he advised him definitely and affirmatively to accept such retainer.

Q. What was the date of that conversation?—A. I could not say definitely, but it was about a week or two weeks after the 25th of July.

Q. Where was it?—A. I think at my office in New York.

Q. Was there any conversation between you and him as to the propriety or impropriety of his accepting a fee as your counsel in the matter in which the whole people of the United States were largely interested?—A. I do not think that that matter was discussed between us as it might be discussed between one who was seeking and one who was giving advice. The question was mooted as a question that he had been discussing in his own mind. He mentioned that he had consulted other friends of his—I think he mentioned other Senators that he had consulted; showing a disposition on his part to seek advice, not of me but of others.

Q. Did he name them?—A. I think he named one—Ex-Senator Eaton. My recollection is that Senator Eaton told me afterwards that Senator Blair had consulted him on that point, and that he had advised him to accept the retainer.

Q. At what time did Senator Blair accept your retainer—at that time?—A. I should think that the retainer was not paid until September or later.

Q. But the agreement was made at that time?—A. There was a sort of general understanding. The drift of the conversation between us was to the effect that we were not seeking gratuitous service; that we should prefer to pay for any service rendered us; but that as to whether it was proper or not for him to accept payment or to act technically as counsel in the matter, that was a question with which we could have nothing to do, and in regard to which we could not undertake to give him any advice. We merely showed a disposition to pay for services rendered, and left the propriety of his accepting compensation for him to determine.

Q. When did Senator Blair cease to be your counsel?—A. My recollection is that it was early in November.

Q. Did you not, as late as December, speak of him as your counsel in letters to General Hurlbut?—A. I may have done so. If I did I referred simply to the general fact that he had acted as our counsel.

Q. And is not Senator Blair's name published as one of your counsel in this very

last pamphlet which you issued only the other day?—A. His name is published as one of those who had passed upon the general merits of the title.

Q. Were any members of Congress stockholders in the Peruvian Company at any time?—A. I will answer that question to this extent, that no members of the House of Representatives have been stockholders.

Q. Go on now in the way in which you were proceeding and finish the statement of your conversation with Secretary Blaine.—A. After General Hurlbut's communication came, in which he stated that he had received a sealed letter and documents and had delivered the letter, I sent for Senator Blair, among others, and submitted the letter to him for his advice. He expressed himself as very much disturbed indeed, and slow and unwilling to believe that General Hurlbut had, or could have deliberately committed himself against us.

Q. You mean by not delivering the documents?—A. Yes, sir; and at that very same moment there came to us other information which I will detail at the proper time, and which was before Senator Blair's mind at the time of which I am now testifying. That information related to assertions that General Hurlbut was directly in the pay of the *Crédit Industriel*. These were the two suggestions before our minds at the time, first, that Minister Hurlbut was working against us, and, second, affirmatively, that he was in the pay of the *Crédit Industriel*. These two suggestions seemed to disturb Senator Blair's mind very much. He expressed great pain and uncertainty, and his suggestion, after a little delay, was, "Take your letter-books and all your data, come to Washington and lay them before Secretary Blaine, and we will get at the bottom of the facts." After a few days' delay I did come to Washington, bringing copies of such letters as I wished to show the Secretary, and was received at his house.

Q. At what time was that?—A. [Referring to a memorandum.] I should say that it was probably on the 13th or the 14th of October. I fix the time with reference to the date of General Hurlbut's letter, which was September 12, and which must have reached me early in October. My recollection is that a very few days after that I came to Washington, and as the only October dates I have are the 13th and 14th—

Q. Have you not been testifying in regard to the interviews of November 13 and 14?—A. Only in part; only with reference to the dispatches.

Q. So that the interview which you are now going to state is a portion of the interviews in respect to which you have already testified in part?—A. If I am correct as to the date, it is.

Mr. RICE. Go on, then.

The WITNESS. The Secretary received me with apparently a mixture of cordiality and apprehension. I inferred from his manner that he had had some intimation of the intent of my visit.

Q. That was your visit at his house?—A. At his house, I should say, on the evening of October 13, probably. He opened the interview by asking somewhat abruptly what I had come after this time. I said, "I suppose, Mr. Secretary, I have come after General Hurlbut's official head. If we are rightly informed things are in a very bad way down there." The Secretary replied, with a manner that seemed to me decidedly angry, "Well, what is the matter now?" I went on then to recount to him the substance of the correspondence that had passed, and exhibited to him General Hurlbut's letter of September 12. He took it and read it, threw it down, and said, "What is the matter with that letter?" I said, "That letter, Mr. Secretary, disturbs us more by what it does not contain than by what it does contain. We find there an utter absence of any such disposition as we supposed existed in General Hurlbut's mind, in view of all that has passed between us and the State Department and himself heretofore—we find an absence of that disposition, which we supposed was there, to forward American interests. He talks about Peru—that Peru needs help; he talks about almost everything except American interests." I then recounted to the Secretary the substance of the collateral correspondence, which showed that there had been a deliberate withholding—

Mr. RICE. You may as well tell us what you recounted to him.

The WITNESS. I stated it yesterday. I refer to it now briefly.

Mr. RICE. You can state now fully just what you said to the Secretary.

The WITNESS. Well, I will follow the suggestion of the examiner. I was going to take the other course, because I didn't want the record made unnecessarily long, and I stated fully yesterday what this collateral correspondence was.

Mr. RICE. I prefer to have the full conversation stated at this point.

(The hour of 12 o'clock having arrived, an adjournment was proposed, but the committee decided to continue the examination long enough to have the witness complete his statement of his interview with the Secretary of State.)

The WITNESS. I told him that the intimation in Mr. Hurlbut's letter that the sealed letter only had been delivered, and not the documents, had been confirmed by a letter received from Mr. Arizola by his correspondent.

Q. Were you aware of the contents of the sealed letter written to Mr. Arizola?—A. I was.

Q. Is that published in this book?—A. A translation of it is.

Q. In that letter a statement was made of what documents were sent in the package to the minister?—A. Yes; I think so. My recollection is not clear about that.

Q. So that the Peruvian correspondent was advised that in the same package in which his letter came, these documents also came?—A. Yes, sir. There was a constant reference to them.

Q. Did he call for those documents, and did Mr. Hurlbut refuse to deliver them?—A. Mr. Arizola was sick on his bed when the parcel reached Lima, and he spoke gratefully of the courtesy of the American minister in coming to his bedside and placing the sealed letter in his hands without waiting for any call. His letter either directly stated or clearly implied that he presumed that the minister had delivered to him all that he had received for him.

Q. But there was a statement in that letter of just what the minister had delivered to him.—A. Whether there was a categorical list of the documents, I cannot say.

Q. So that Mr. Arizola was advised that these documents were with Minister Hurlbut at the time?—A. Yes, sir.

Mr. RICE. Go on with your narrative.

The WITNESS. The Secretary replied to these representations in a very vigorous manner, and in about this language: "Well, sir, what business had you to make an errand-boy of the American minister? What business had you to send any letters for him to deliver to anybody? If he had thrown all your stuff in the fire he would have served you right." My reply was that I had not presumed on any right in the premises, and had only depended upon the courtesy of the American minister; but that I was still unable to see what right the minister had, after receiving the letter and documents, to deliver a part and to detain the rest, especially when he knew that they pertained to international affairs and were intended for the President of the Republic of Peru. To that the Secretary made very little reply. He asked what further complaint there was. I said: "Mr. Secretary, reports have come to us, both through the South American papers and from gentlemen recently arrived from Lima, that General Hurlbut's conduct in Lima has created the general, indeed, the almost universal, impression there that he is in the pay of the *Crédit Industriel*." "Well," said he, "what are the facts? What do they allege?" "They allege, in the first place, Mr. Secretary, that Mr. Suarez, the recognized agent of the *Crédit Industriel* went out as a fellow passenger with General Hurlbut, and on the voyage was on terms of noticeable intimacy with him; that on their arrival at Panama, the American minister took on board of the American vessel that carried him a large part of the personal baggage of Mr. Suarez, and passed it through the custom-house at Lima as part of the personal baggage of the minister, contrary, as it was, to all proprieties. They further allege that this baggage of Suarez contained issues of money prepared in New York contrary to law" (and concerning which there was subsequently considerable correspondence). "Well," said he, "that is none of your business." "Very well, Mr. Secretary." "Well, what else have you got?" "It is alleged, further, Mr. Secretary, that on the arrival of Mr. Suarez and General Hurlbut at Lima, Suarez took Hurlbut immediately to one of the most elegant residences in Lima, furnished from top to bottom, with a wine cellar exceptionally well stored, and that he requested the American minister to accept the free use of it during his official residence, with the compliments of Suarez and the *Crédit Industriel*, and that Mr. Hurlbut accepted and now resides under those circumstances in that house." "Well," said he, "you will not catch Steve in any such way as that. He pays some rent for it, or something. He has got some deal. You cannot catch him in that way. He was not born yesterday. Have you got anything else?" "Further," I said, "Mr. Secretary, it is alleged, especially by gentlemen who have recently arrived in New York, whose names I will give you, and whom you can summon and examine for yourself, as a matter within their personal knowledge, that Suarez practically resides at the American legation: that he is continually there, as though he were a member of the family; that he is the escort of the ladies and children of the legation; that he goes arm in arm with the American minister everywhere, as no one else does, and that he maintains relations with the minister which are the talk of the town." He looked at me very sharply and said:

"If that is the fact, Mr. Shipherd, Hurlbut has been purchased outright. I do not want any other proof and will not accept any explanation. If he has been conducting himself in this way publicly in his relations with Suarez, after all that has passed between Suarez and this department, there is no excuse for him. He has sold out, and I will go to the bottom of the affair immediately." "Thank you, Mr. Secretary. Shall I give you the names of the gentlemen?" "No; I don't care anything about that. I will go to the bottom of this thing. What do you want me to do?" I had with me the suggestion for a draft of a cable message to be sent. I will produce it if the committee desires, but I have not got it here.

Q. Give the substance of it.—A. I would rather present the original draft, for special reasons. Before I came to Washington on that occasion, I submitted that draft to General Grant, and I asked his judgment about it. I also submitted it to several gen-

tlemen with whom I was in conference, with reference to its revision before I should submit it to the Secretary of State. General Grant indorsed his opinion on the back of it, and if the committee wish, I will be glad to submit the draft with the indorsement. I did not present to the Secretary of State the draft which General Grant had indorsed. That obviously would have been indelicate and improper. It was nothing to the Secretary of State what a private citizen might think about it. I submitted to him a copy of the one which had been approved. He read it through, threw it down, and said, "See here; that will not do. If I sent that, there would be a row in Congress next winter. But here, Henry" (turning to the Senator), "have you a pencil?" The Senator lent him a pencil, and, tearing off a piece of the paper, he wrote on the arm of his chair, a dispatch substantially this: "Reports reach us that you are so conducting yourself as to encourage the *Crédit Industriel* at Lima. Such conduct is disapproved, and must instantly cease." "I think," said he, "that that is the thing to send. That is about as sharp a message as I should like to receive if I were a minister. That will fetch him up. It will do the business." "Very well, Mr. Secretary," said I. "Do you not think," said he, "that that is sharp enough?" "I agree with the Secretary that it is quite as sharp as I should like to receive." Said he: "That will fetch him. I will go to the bottom of this thing, you may rest assured of that." I think that that was the substance of what passed on this topic, at least at that time.

Q. Was that draft which he wrote and read to you substantially the dispatch which appears in the printed volume as the dispatch which he sent?—A. The next time I saw Senator Blair he told me that the Secretary told him that he had sent the dispatch just as he had drafted it, on the same evening.

Mr. WILSON. Had Senator Blair been present at this interview?—A. Yes, sir; the dispatch published is entirely a different thing from that which the Secretary read to me. The dispatch as published is: "The influence of your position must not be used in favor of the *Crédit Industriel* or of any other speculative enterprise." The minister's reply was: "It has not been, and will not be." The next time that I met the Secretary he said to me: "Ha! Heard from Steve?" "Yes, Mr. Secretary." "Oh, yes," said he. "I knew there was nothing in it. I told you I would go to the bottom of it. He says there is nothing in it at all. Now that is the end of it, and let me never hear anything more about it." That, so far as I know, is the investigation which was conducted in the premises, and is the result of it. The Secretary never called upon any of the witnesses to whom I referred him, nor asked me for any further information in the matter.

Q. Have you gone through with the interview?—A. On this topic.

Q. State here, if you have got through with your testimony in reference to this interview, who were the persons whom you named to the Secretary as having this information.—A. I would like to give their names privately to the committee with reference to their being summoned, if it seems best; but, as private citizens, I do not think it quite necessary to have their names published to the whole country. The information is at the command of the committee, if it can be of any service to it.

Mr. RICE. I do not think that anything will be gained by withholding their names.

The WITNESS. I was questioning whether it would be just fair to have their names published. We must not forget that this investigation is open to the whole country.

Mr. RICE. Of course, their names will become public.

The WITNESS. Yes; if they are called as witnesses. I do not know why their names should be made public otherwise. As I understand it the only point in my testimony is the fact that I brought certain allegations to the attention of the Secretary, and it is utterly immaterial whence those allegations came.

Mr. RICE. If you choose to withhold their names for the present, I will pass on.

The WITNESS. It seems to me that, as a matter of delicacy, it would be better, perhaps, to withhold them for the present, but I hope the committee will not suppose that I am guilty of any discourtesy.

Q. Have you exhausted your entire recollection of the interview of October 13th?—A. No, sir; my mind has been directed to this single topic. At present I recall nothing further in connection with this topic.

Q. Was there anything else at that time?—A. If I were to follow my memory in the matter, I should go on now to the interview of November 3, concerning which I have some distinct recollection.

Mr. RICE. Very well.

The WITNESS. On the evening of November 3, as my memorandum has it (referring to memorandum), I was again with the Secretary. I do not, at the moment, remember what were the leading topics of the conversation. The interview lasted about two hours, approximately from 8 o'clock to somewhere after 10.

Mr. ORTH. Who was present at that interview?

The WITNESS. Senator Blair and Mr. William H. Cilley.

Mr. RICE. What interest did Cilley represent?

The WITNESS. Of course I state from hearsay only. He represented no direct interest with me. I understood his business interests in Peru to be like this: He was for

many years connected with Mr. Henry Meiggs, the railway builder. He was, as I understand, his confidential cashier, and handled all his money and accounts. He was made one of the executors or trustees of the Meiggs estate. In connection with that estate, which was very largely indebted to Mr. Cilley, as I am told at the time of Mr. Meiggs's death, Mr. Cilley received a transfer of Mr. Meiggs's interest in the Arroyo Railway, which begins at Callao, runs to Lima, and thence backward to the mountains. It is the road that has been described as a "railway among the clouds," a road that was built at very great expense. I understand that Mr. John Meiggs, the brother of Henry Meiggs, is associated as a partner (whether an equal partner, or otherwise, I am not informed) with Mr. Cilley. I am informed that Mr. Cilley and Mr. John Meiggs control the Arroyo Railway, and, in connection with it, have a long lease of the Cerro del Pasco silver mines, which are located at some distance beyond the present terminus of the road, at a point to which the road is expected to be built. These mines have been represented to me as being of very great value, capable of producing, it is said, not less than one hundred million dollars of silver annually, for an indefinite number of years. This railway, and the mining interest connected with it, are the large interests Mr. Cilley represents, and to which I have referred in letters that have been printed. Mr. Cilley was introduced to me by a mutual friend, on his arrival from Lima en route to England, to join Mr. John Meiggs, his partner. He had heard of something after his arrival of our plans, and I think he sought an introduction. At least, he was brought to my office. The result was a full conference, in which the aspects of the case were discussed by him from his view-point as an American long resident in Peru. The general result of several conferences that followed, were stated by him in about this form:

"You have the only scheme that will ever render, in this generation at least (probably for 50 or 100 years to come), Peru habitable to American business men. An indefinite Chilean occupation or the mere restoration of Peruvian revolutionary governments will do nothing for us. All my interest in Peru I consider as practically valueless, now and for an indefinite time to come, unless your plan can be made to succeed. Your plan is feasible in all its parts, and, so far as my interests are concerned, if you succeed, my property immediately becomes worth par. I, therefore, shall delay my journey to Europe, and shall remain at your command for an indefinite period, with a view of aiding you, if I can, to get your scheme on its feet." This is the totality of the understanding between us. He has no direct interest with us, but only regards our scheme as a means of making his property valuable.

Mr. BELMONT. Did you ever hear that Suarez was also secretary of Henry Meiggs?

The WITNESS. I was aware that Mr. Suarez had been secretary to Mr. Henry Meiggs. Mr. Cilley was his cashier and paymaster, as I understand. Mr. Cilley and Mr. Suarez were evidently intimately acquainted. That is the aside concerning Mr. Cilley. Now, to return to the interview of November 3, at which Cilley was present. I had suggested to Mr. Cilley that he would be welcome to come with me on this trip, so that he might converse with the Secretary himself in regard to the real attitude of the United States Government toward our scheme. That was an important question with him, of course, and he wished to gain light on that subject. With that view he attended this interview.

Mr. RICE. Had he been personally acquainted with Secretary Blaine before that?

The WITNESS. No, sir; he and Senator Blair had been schoolmates together in New Hampshire years ago. They had not met for many years, but they had a boyhood acquaintance, which was renewed at that time. I remember that at that interview Senator Blair said to the Secretary, "Here is a gentleman chockfull of first-class information in regard to Peru," and he suggested that the Secretary might occupy the evening pretty fully in asking questions. But this suggestion seemed to meet with no response. Practically there was no conversation between the Secretary and Mr. Cilley. The time was occupied with the discussion of Peruvian Company interests generally. At this interview I remember that a suggestion was made by the Secretary which made a deep impression on my mind. It was toward the latter part of the evening. The conversation had been very free and informal.

Mr. RICE. Had you not better give the conversation in regular order?

The WITNESS. I do not think I could undertake to give it chronologically. There was no special topic, that I remember, which was so discussed as to make a deep impression on my mind at the time; but toward the close of the interview the Secretary, who had been walking up and down the parlor, stopped suddenly and addressing me said, "Shipherd, do you know you have got something they haven't all got?" "Thank you, Mr. Secretary what may that be?" He drew up a chair, sat down close in front of me, and putting himself very closely to me, leaning over so that his face was almost in my face, he struck me on the knee in a friendly way and said, "Patience, sir, is what you have got, and there are very few of them who have got it. And now I want to give you some more advice that will not cost you anything. You need nothing but a little more patience to win your whole deal. Every time that the Chilean minister comes to the State Department to see me I notice that his chair is a little hotter than

it was before, and the fire under it is the fire of the Peruvian Company. He can't stand it much longer. Now, if you will just be patient, Shipherd, in a little while Martinez will drop into your lap like a ripe apple. See if he doesn't." That was substantially the close of the last considerable interview I had with the Secretary of State. That was exactly 30 days before he wrote the letter of December 3.

MR. RICE. Have you exhausted your recollection of that last interview?

THE WITNESS. I do not recollect anything else that topically seems important at the moment. Subsequent questions may refresh my memory.

MR. RICE. If there were anything else of importance in that interview it would probably suggest itself to your mind now?

THE WITNESS. It might, or it might not. I have had a great many things to carry in my mind for the last few months. The feature of the interview was Mr. Blaine's statement, which I have given, and which made a profound impression on me.

MR. RICE. The interview of November 5 (the only remaining interview), you have stated was brief, and occurred upon the train between here and New York?

THE WITNESS. Yes, and substantially all that passed there was this: The Secretary had gone on to Philadelphia, and was to go to New York the next day. He therefore joined me at Philadelphia on the limited express. Finding him in the car as I had expected to find him, I propounded to him a question which I had intended to propound at our interview of November 3, but which had escaped me then. It was with regard to his judgment as to the fitness of two gentlemen, both ex-Senators of the United States, whose nominations we were then considering as commissioners plenipotentiary of the company to visit Lima. I consulted him in regard to it, as I had been accustomed to consult him in regard to other matters on which he had always advised me frankly. I said to him, "Mr. Secretary, we are now considering the propriety of tendering the office of commissioner plenipotentiary to such and such gentlemen [naming the two gentlemen]. What do you think of them?" In his hearty way he exclaimed, "Shipherd, they are the two best men for you in the United States. Don't you fail to get them." That, I think, is the substance of all that passed.

MR. RICE. Give the names of those gentlemen.

THE WITNESS. I do not think it worth while to give them, as it is purely a private matter.

MR. RICE. Was that substantially all that passed?

THE WITNESS. That was substantially all that passed upon the train. I now remember a topic that was discussed on the evening of November 3. That was with reference to a protectorate to be established by the United States Government. The conversation took some turn (I do not recollect how it began) which led to the suggestion of a possible protectorate. Mr. Cilley was asked what he thought would be the sentiment of Peruvians, especially of intelligent and influential Peruvians, in regard to an American protectorate. He answered, with emphasis, that at least 90 per cent. of all Peruvians would be heartily in favor of it, and would welcome it as their salvation. He said that they had become intelligent enough to distrust their own ability to govern themselves; that they were in despair under the Chilian heel, and that an American protectorate in any form which would give them encouragement that the United States would even help them out of their trouble would be welcomed very eagerly; and that the more definite the proposition for a protectorate was made, the more eagerly it would be welcomed. Some question was addressed to me with reference to my idea about it, and my answer was, "It seems to me, gentlemen, that the logical necessity of the situation will result in a protectorate if Peru is going to be saved. I do not believe that, constituted as Peru now is, she alone will be able to set up a government that will command the confidence and the loyalty of Peruvians, and I do not believe that Chili is going to do anything satisfactory in the way of establishing a government in lieu of the Peruvian Government." The Secretary surprised me by the apparent eagerness with which he listened to this suggestion. The idea of a protectorate, I think, had not been discussed between us before, or in his presence. He seemed to be listening with what I should say was strained eagerness, great eagerness, and the moment there was a pause he said, "See here! can you not get Calderon to send up a deputation?" "Why, yes, Mr. Secretary, we can try." "Now," said he, "if he would send up three first-class men (do not let him send one or two), three of his very best men, to come here with a formal application from him, properly backed by the representatives of Peru, to show that it is not merely the application of Mr. Calderon individually, these commissioners would remain here, where members of Congress could have free access to them. They would come prepared to furnish all the facts. I think that it might be well worth while." I replied, "Mr. Secretary, do you think that Congress would favor a protectorate?" "Well," said he, "I tell you the experiment is worth trying. You see if you cannot get Calderon to send up a deputation." There was some further discussion in the same line on that general topic. My recollection is that that is the substance of the Secretary's declarations on this point. It was with reference to that conversation that I subsequently wrote to General Hurlbut what I did in relation to a protectorate.

Mr. RICE. In all your correspondence, either personally or by letter, with the Secretary of State you received the idea that he was very desirous to aid Peru, did you not?

The WITNESS. Not prominently. I received the impression that he was very desirous to have the trouble down there settled on a fair, generous basis, the result of which would be the giving to Peru a fair start again.

Mr. RICE. In all that you have stated as to your interviews with the Secretary, have you anywhere given us the impression, or did you derive the impression, that he acknowledged or recognized that the validity of your Cochet claim had been satisfactorily proved?

The WITNESS. There was only one impression made on my mind by Secretary Blaine from the first interview that I had with him up to the time that I received his letter of December 3. That impression was that he was perfectly satisfied that this claim was sufficiently proved to be a legal and proper claim, and that the scheme which we had outlined was sufficiently shown to be a reasonable and proper scheme to make it proper for him to give us at every point all the encouragement that we asked for.

Mr. RICE. Where is there anything in all your testimony of what Mr. Blaine said or wrote that justified you in supposing that he recognized that the validity of the Cochet claim had been sufficiently maintained by you?

The WITNESS. In the first place, I understood that to be overwhelmingly implied in the relations which he entered upon with Senator Blair; in his admitting him as my recognized counsel; in conferring with him as he seemed to do; in exhibiting to him drafts of his dispatches; in promising him that everything that went into, or out of, or through the State Department which affected our interests should be made known to us; and generally, in all his intercourse with Senator Blair and myself. At this point I will state another circumstance which made a great impression on my own mind. Senator Blair said to me, perhaps a week or two after the retainer was settled: "Now, Shipherd, let me tell you something; don't you hesitate to quote the Secretary; and don't you hesitate to quote him strongly. Quote him a great deal stronger than he has ever talked to you, and you will be inside of facts. Don't ask me any questions; but if you have confidence in my advice take that advice." He repeated to me from time to time (almost every time we met in New York) throughout the summer and fall as long as he acted as counsel: "Shipherd, you can just bet on the Secretary of State. The policy down there is exactly what we want. It is everything that you can desire. Do not expect the Secretary to commit himself in writing or talk to you. He talks to me; takes my advice; and you just build on it that the Secretary of State is with us."

Mr. RICE. Then he did not commit himself to you personally?

The WITNESS. He made the statement to me in the last interview that I had nothing to do but to sit still and see the Chilean minister drop into my lap.

Mr. RICE. You told him that you were the sole executive head of the Landreau claim?

The WITNESS. I explained that to him exactly as I have explained it to the committee.

Mr. RICE. You understood that he did recognize the Landreau claim as one having a good deal of merit?

The WITNESS. I never understood him to make any distinction between the Landreau claim and the Cochet claim. I did understand him to recognize absolutely that we, the owners of the Cochet claim, founded all our schemes and prospects on the Cochet claim alone, and that he dealt with us from first to last with an unmistakable reference to our connection with that claim.

Mr. RICE. In the dispatch to Mr. Hurlbut, which the Secretary showed you, did he not make a distinction between the Cochet claim and the Landreau claim, saying that the one had not been sufficiently maintained, and that the other did seem to have merit?

The WITNESS. This dispatch will show for itself. As I have testified, he explained to me that he wrote that dispatch with a view of meeting exclusively my wish, which was that the merits of the Cochet claim should not be put forward and should not be discussed until we had first furnished an opportunity for Peru to pass upon it, because we conceded that if Peru should admit the claim, it would make all this matter *res adjudicata*. There was a perfect understanding between the Secretary and myself on that point; indeed it was impossible for him to misunderstand me.

Mr. RICE. Did you understand that he knew that in 1861 the claim of Cochet against Peru had been submitted to a convention of French and Peruvian citizens, and passed upon?

The WITNESS. I know nothing about that.

Mr. RICE. Have you ever heard that that was a fact?

The WITNESS. The first that I heard of it was in Mr. Hurlbut's letter sent to the committee.

Q. Did you ever hear that the award of this commission, to which this claim of

Cochet's as a French citizen for a reward from the Peruvian Government for certain scientific discoveries in reference to guano, was that he had no valid claim against the Peruvian Government?

The WITNESS. I read in a New York paper yesterday what purported to be a statement of that adjudication.

Mr. RICE. And that is the first that you ever heard of it?

The WITNESS. Yes.

Mr. RICE. If there was such an adjudication as that, would it not make the claim against the Peruvian Government of Alexander Cochet *res adjudicata*?

The WITNESS. No, sir. The claim made by the Peruvian Company in behalf of Alexander Cochet has never been submitted. Nobody has ever pretended, to my knowledge, that it ever has been submitted to any tribunal for adjudication. The claim of Alexander Cochet, it is alleged, has been before a commission. All that is stated in reference to that claim shows that it was a claim merely for 5,000 tons, or some fraction of 5,000 tons of guano, under the award. That was not the claim which we make, and we have no connection with it. That claim was no more than an appeal to the generosity of the Peruvian Government.

Mr. RICE handed to the witness an extract from the New York World, as follows:

"In 1861 all the claims of French subjects against the Government of Peru were submitted under a convention to a mixed commission of French and Peruvian citizens, consisting of Don Pedro Salmon, Don Julian Zاراcondégui, Don Mariano Paz Soldan, M. Achille Allier, M. D. N. Rey, and M. Emile Vion. Among the claimants who appeared before this commission was Alexandre Cochet. Cochet had previously approached the Peruvian Congress and courts with a claim, not against the government, but against two persons, a Peruvian named Quiros and a Frenchman named Allier, of whom he complained that they had availed themselves of information given by him in order to secure a concession for the exportation of guano without recompensing him. It had been decided that if this were true it gave Cochet no claim against the Peruvian Government; but, finally, Congress gave Cochet, 'not as a matter of right, but as a free gift, the value of a thousand tons of guano.' This gift, of course, in passing through the prismatic mind of Shipherd becomes 'an allowance of 5,000 tons of guano.' When Cochet appeared before the Mixed Commission of 1861 his 'claim' was first reported upon by M. Vion and then passed upon in a resolution by the commission. The following is a literal translation of the report of Vion:

"The case of the French subject, M. Alexandre Cochet, does not present the true character of a claim. It is rather an appeal addressed to the benevolence and generosity of the Peruvian Government, of which he solicits as the reward of certain services performed, a sum of money or an assignment of guano. I am of the opinion that, regard being had to the delicate nature of the case, the commission should declare itself incompetent to treat of it, and that it be referred to the French chargé d'affaires. I see no reason why we should pass on it, since it is simply a question of national recompense, or, in other words, of a spontaneous act of generosity not to be dealt with by arbitrament or counsel.

"E. VION.

"LIMA, April 20, 1881."

"On the same day the commission adopted the following resolution:

"The commission considers that this business is subject to its decision, and it decides that the claim of Cochet is unfounded."

Mr. RICE. Do you understand that if a claim for that award of 5,000 tons had been submitted to a commission, according to that statement, and decided, it was *res adjudicata*?

The WITNESS. I can only state abstractly what I understand of the case, because I have no knowledge of the facts. I cannot accept the statement in the New York World as correct.

Mr. RICE. But if that were the fact?

The WITNESS. I can only state hypothetically that whatever claim was submitted to a tribunal having jurisdiction, and was by that tribunal adjudicated, must, of course, of necessity be *res adjudicata*. The point is that the claim made by the Peruvian Company never has been, to my knowledge or suggestion, submitted to any tribunal, and therefore our claim never has been adjudicated.

Mr. RICE. Have you any facts to prove that Secretary Blaine was interested with Mr. Hurlbut in behalf of the Crédit Industriel?

The WITNESS. O, no, sir.

Mr. RICE. He was not interested in behalf of your company any further than you have stated?

The WITNESS. No further than I have stated.

Mr. RICE. And you have not any facts or impressions going further than you have already stated in regard to that?

The WITNESS. Yes; I have a good many more.

Mr. RICE. Have you any other facts to give?

The WITNESS. If the committee will indulge me, I would ask to be relieved from further examination at this point. I think I have gone as far as I ought to go in one day under medical advice. I would like an opportunity to state on Monday what was said at the conference on October 14, in relation to the bribery letter. I have already stated that that was discussed, not only at the first interview with Secretary Blaine, but at subsequent interviews. That continued until the 13th or 14th of October. Immediately after that I would like to answer very fully the general question in regard to Secretary Blaine's attitude toward this company and in regard to General Hurlbut's attitude toward this company.

Mr. RICE. I understand you say that you have not any facts to show that Secretary Blaine was interested in the *Crédit Industriel*?

The WITNESS. I have no facts, and I do not know that the suggestion, in any form, ever came to my hearing that he was interested in the *Crédit Industriel*.

The CHAIRMAN. You stated that the submission of the Cochet claim to the mixed commission was an appeal to the generosity of the Peruvian Government?

The WITNESS. I pointed out the fact that this paper simply shows on the face of it that the subcommittee of the commission which passed upon the Cochet claim, reported that it really was not a claim at all, but an appeal to the generosity of the Peruvian Government to do something for him in a very small and modest way.

Adjourned until Monday, April 10, 1882.

WASHINGTON, D. C., *April 10, 1882.*

The committee met pursuant to adjournment. The testimony of JACOB R. SHIPHERD was continued as follows:

Mr. BLOUNT. You were asked by Mr. Rice at the last session of the committee this question: "And you have no other facts or impressions going further than you have already stated?" Your reply was: "Yes; I have a great many more; but I will ask to be relieved from further examination at this point. I think I have gone as far as I ought to go in one day, under medical advice." In order that your statement may be connected, I ask you to answer that question now.

The WITNESS. I do not exactly see that there is any question before me. The general question was asked whether I had any more facts or impressions, and I said yes; I had more. If the examiner will be kind enough to form a definite question, I will answer it.

Mr. BLOUNT. I simply renew Mr. Rice's question. You had been making a statement in reference to a protectorate, and to various matters. I supposed, from your answer to the question, that you had certain matters in your mind. You had been testifying as to the several interviews with Mr. Blaine, and you stated, generally, that there were other facts and impressions which you desired to communicate; but, as you were not well, you asked to have it postponed. If you have not anything which you desire to state in that connection, I will proceed to examine you.

The WITNESS. I wish to state simply this, so as to define precisely my position. In answer to general questions, I have, almost necessarily, gone into considerable recitals recently. On reviewing the testimony myself, it seems to me as though it had a look, in passages, of being volunteered. I do not want to volunteer anything, nor to seem to volunteer anything. I wish to respond definitely to any question that the committee may put to me. I do not wish to undertake to give my impressions or views generally in regard to Mr. Blaine or anybody else.

Mr. BLOUNT. You have already stated what prompted you to write the note of June 2 to General Hurlbut. In your letter of 28th September, 1881, to General Hurlbut, I find this paragraph: "I may as well be frank enough to say, further, that the intelligence and vigor with which you have begun your work fulfill our best hopes, and that if there is a change in the head of the Department of State, we shall ask that no change be made at Lima." What was your idea in addressing such a message as that to our minister at Peru—that your company was pleased with him, and would try and see that he was not removed?

The WITNESS. I do not know that I can add anything to what appears in the paragraph.

Mr. BLOUNT. Did you want to impress General Hurlbut with the idea that you had influence with the State Department in this matter, and that you might be of service to him if the question of a change of minister to Peru should be discussed or considered?

The WITNESS. I can only answer that by making this general statement. I have

already stated frankly to the committee what is the exact truth: that I never in my life have had the slightest experience in politics, and that I know of no way of dealing with anybody, whether in office or not, except the ordinary way in which business men deal with each other. I had the general feeling towards Mr. Hurlbut that it was his official duty (I was so advised) generally to promote legitimate American interests. I had been so instructed by the Secretary of State. I wrote to Mr. Hurlbut just as I would write to a merchant, with utter frankness, and intending to convey the idea generally that so far as he performed what we understood to be his duty in co-operation with us, so far what he did would be appreciated in a courteous and friendly spirit, and reciprocated in any proper way in which we might be able to reciprocate it. I did not for a moment suppose that there would be anything unusual or improper in steps which might be taken looking towards the removal or retention of Mr. Hurlbut at his post. I was advised by gentlemen associated with me, who were in politics, that the probability was that, on the accession of the new President, General Hurlbut would be removed for political reasons. The words here used were intended to assure him that so far as our influence might go it would be in favor of his retention on the ground that he was legitimately doing his proper duty. I wrote to him therefore (in a word) simply as a business man, and as I would have written to any business man.

Mr. BLOUNT. You considered it a legitimate thing in connection with your business as representing the Peruvian Company to send this message to the American minister at Peru?

The WITNESS. I certainly did.

Mr. BLOUNT. I find in your letter of October 27, 1881, to Mr. Hurlbut the following paragraph:

"Our company, now fully organized and already a formidable power, being purely commercial, necessarily includes, however, not only those who, like myself, are your steadfast political friends, but men of all political parties and factions, all of whom would none the less gladly be your friends as minister, and would heartily uphold your hands, if you would give them the slightest opportunity to do so; but who cannot be expected, when they see you totally indifferent to their interests—or apparently so—to forbear criticism not only severe, but possibly unjust. Such is human nature."

Was it not your purpose in writing that to influence the action of General Hurlbut, in connection with the interests of the Peruvian Company, by speaking of the strong political associations that you had, and your ability to do him a good or bad turn as he might deserve in connection with his position as minister?

The WITNESS. The impression which I sought to make upon General Hurlbut's mind was this: That the Peruvian Company was absolutely non-political; that it included men of all parties and all factions, who looked to him simply as business men for such co-operation as we deemed it his duty as minister to furnish; that if this co-operation seemed to be lacking, these men, of all parties, would feel that he was not fulfilling his proper duty; that if it were furnished, they would appreciate it, and without regard to party would appreciate (that is just the word) the fulfillment of his proper functions in the premises.

Mr. BLOUNT. You did not think that he was giving his political friends in the Peruvian Company much opportunity just then to uphold his hands, and you were reminding him of it?

The WITNESS. Yes, sir.

Mr. BLOUNT. I find in the same letter the following paragraph: "If now, my dear sir, you see your way clear to work with us, I will bury all the past, and you shall find in me a true partner." What did you mean by that communication?

The WITNESS. I mean what the whole letter and what the whole correspondence (I take it) clearly shows, and what is expressly stated in the sentence immediately following: "Certainly I ask nothing of you but that you serve the interests of the whole United States and of Peru at the same moment." I think that I can throw no additional light on my answer to that question. It was a frequent suggestion both of Mr. Blaine and of Senator Blair in such connection (and I understood the inspiration of Senator Blair to come from Secretary Blaine, although that was merely inference), that we should hasten to send down our commissioners to Lima, there to co-operate with General Hurlbut; and that suggestion was pressed on my attention in contrast with, and almost in opposition to, another suggestion which I made two or three times, and which was that somewhat more specific instructions might be sent by the Secretary of State to Mr. Hurlbut, corresponding more in detail to the tone and the attitude which the Secretary of State was maintaining towards me here. In reply to these suggestions, when I made them, both the Secretary and the Senator said, "It is better that you should send commissioners there who shall, on the ground, co-operate with General Hurlbut"; and in that connection the Secretary expressly said to me, "The moment these commissioners arrive, it will be the duty of the minister as a friend, an official friend, to take them by the hand, to find introductions for them to the parties they want to seek, and to aid them in their conferences in every way. That is the method, Mr. Shipherd, which you should pursue rather than ask

me to send more specific instructions. Send your commissioners to Lima to co-operate with General Hurlbut and I assure you that he will co-operate with them." I had that general suggestion in my mind when I used this phrase of a partner. I assumed that it was, as I had been told, the official duty of General Hurlbut to co-operate with us in such a way. I could not see why he should not co-operate with us before our commissioners plenipotentiary went there; and the only point of difference between the Secretary and myself, all the summer long, was that point of difference. The co-operation was assured to me again and again and again.

Mr. BLOUNT. I find in this same letter of yours to Mr. Hurlbut the following paragraph:

"If I need a commissioner, I am content with the American minister, for the time being. I need nothing from him that his official duty *ex virtute officii* does not require of him, to wit, that he shall do always what he can for the interest of the United States, and as a friend also for the country to which he is accredited. If he does this, he must to the uttermost promote the international plans of this company, and no man I can send can do this so well as he. I do not for a moment distrust him, if once he will set out to utilize in a large way the mere facts as they stand. He cannot go amiss, and he will find in this office during his ministry, and as long as he lives, the surest appreciation and the most helpful friendship."

What idea did you mean to convey there when you say that he will find in the office of your company during his ministry, and as long as he lives, the surest appreciation and the most helpful friendship? Was there not a purpose and expectation in your mind to impress General Hurlbut with the idea that if he did what you wanted you would not only take care of him in his position as minister, but that he could always come to you for aid of any kind as long as he lived?

The WITNESS. I meant precisely what I said. The idea in my mind was precisely that which I expressed in strong language—an assurance of appreciation which would be permanent. I had not in mind any definite idea of what I should do, or might do. My recollection is that the general feeling I had was that if he co-operated with us in this matter we should never forget so valuable a service. Certainly there was nothing more definite than that in my mind. If there had been, I should have expressed it. I do think that this correspondence, turned inside out as it is, taken with my testimony, should fairly impress the committee with the fact that if I am anything, I am a frank man, an open man, a man who says exactly what he means and says all that he means. That is the fact, and it is the only explanation which I can give of such statements in the correspondence. I wrote in every instance all that I thought, and I suggested all that I meant.

Mr. BLOUNT. That is subject to the additional qualification that you would "bury all the past." You seem from that to have had a disagreement with him. Was it not your purpose, in these two paragraphs of the communication, to urge him both by the suggestion of fear and of interest to do what you wanted him to do in connection with the interests of the Peruvian Company?

The WITNESS. So far as I know there was nothing in my mind that is not fully and completely stated in the phrasing here. There was certainly nothing in my mind, and there is nothing in any letter either to my knowledge, that is not always in perfect harmony with the qualification with which I close the letter—that I expect him only to do that which it was his duty *ex virtute officii* to do. I dealt with the Secretary of State on that ground exclusively. I said repeatedly in my letters to General Hurlbut that I never asked or expected any co-operation from him except such as his chief was giving me here, and that if he co-operated with me there as his chief was co-operating with me here, it would meet my highest wish. That is found in the record, and that is literally and absolutely true.

Mr. BLOUNT. Mr. Wilson desires that you shall explain what you meant by the words "true partner."

The WITNESS. I have already explained that as fully as I can. It meant the same kind of partnership as I had with Mr. Blaine—a partnership between the government on the one hand, and a corporation entitled to the good offices of the government on the other hand—no other partnership.

The CHAIRMAN. Did that imply the sharing of losses and expenses?

The WITNESS. That implied the sharing of advantages with the people of the United States as a whole.

The CHAIRMAN. But it did not relate to pecuniary profits or losses, I suppose?

The WITNESS. It did not relate to the dividends to be paid to the United States as a shareholder in the Peruvian Company; and it did not relate to dividends in any form, or to any fees or rewards to be paid to any individual in the United States out of the treasury of the Peruvian Company. It related to a sharing of the benefits at large which we then believed, and still believe, might result to the whole United States, if this scheme should succeed.

Mr. BLOUNT. I find this paragraph in your letter to Mr. Hurlbut of November 29, 1881:

"So long as you stand with us we will stand faithfully for you. You have deserved and have won Peruvian confidence; you have made Chili an enemy; we deal only with the facts; you may rely on our whereabouts with mathematical certainty."

What did you mean by telling Mr. Hurlbut that you would stand faithfully by him? What interest had he at stake which you proposed to stand by?

The WITNESS. I mean in a new phrasing precisely what I have been explaining in reference to the other phrasing. He had primarily at stake his reputation as minister. It was being very seriously attacked at that time. And if the examination at any time should call for it, I shall have something to say specifically on that point as to what relations we sustained to General Hurlbut's official reputation, and what we did in the premises. That was a matter of very great importance, and it was that which I had primarily in mind at the moment when I wrote this paragraph.

Mr. BLOUNT. What did you mean by saying that he had deserved and had "won Peruvian confidence"?

The WITNESS. I meant that he had devoted himself directly to the promotion of Peruvian interests, as such, in such a way as to deserve and to win the confidence of the Peruvian Government, and, as I was advised, the confidence very extensively of the Peruvian people. My advices about that time were that General Hurlbut was the idol of the Peruvian people, as a whole. These advices were direct and were very full.

Mr. BLOUNT. What was the date of the interview in which you denounced General Hurlbut to Mr. Blaine?

The WITNESS. Approximately the 13th of October.

Mr. BLOUNT. You were very greatly dissatisfied with General Hurlbut on the 15th of October. What had occurred in the meantime to put you in such fine humor on the 29th of November, when you promised to stand faithfully by him?

The WITNESS. The fine humor, as you characterize it, will be found to be very carefully qualified—conditionally. The particular fact which had occurred to lead me still to think that he might do something for us was the writing of his letter of October 1, in which he says that he very sincerely wishes that our claim should appear to have as solid a basis as we thought it had, because in that case it could be of great use. That letter of October 1 was written two days, I think, after Calderon had been taken away. And I understood the letter (and others who read it with me understood it in the same way) to imply a suggestion on the minister's part that he really wished we could put this thing now in such a shape that it might, as he phrased it, be of very great use. That is, if our company could come to the front in a certain way, our interests might be made the basis of a demand for the unconditional return of Calderon, and the restoration of the Peruvian Government to the condition which General Hurlbut thought it ought to be restored to.

Mr. RICE. Can you refer us to that letter?

The WITNESS. I think that the date of it was October 1. I have the original letter in my pocket.

Mr. DEUSTER. This letter had not reached you on the 13th of October, the day of your interview with the Secretary of State?

The WITNESS. No, sir. The letter is as follows:

"LIMA, October 1, 1881.

"JACOB R. SHIPHERD, Esq.:

"I acknowledge receipt of your 'duplicates' and of your last letter. I very sincerely wish that the claim which you represent was as solid and substantial as you appear to consider it, and so indorsed and declared by the United States. It might in that case be of great use.

"I wrote you by last mail stating my troubles in accepting, with full faith, your ideas on the matter.

"There are three facts necessary to be strictly proven:

"1. What was the 'discovery' made by Alex. Cochet?

"2. To what extent and by what instrument has the Peruvian Government recognized or admitted his claim?

"3. What is the legal evidence of the legitimization of the natural son, under whom you claim title?

"I have taken some pains to ascertain the law and the facts as to these three points, and so far as I have gone find nothing encouraging.

"Cochet could not have discovered the agricultural use of guano, for it was used as a fertilizer by the Incas. So far as I can find, he never claimed this, and whatever discovery he may have made, and for which the premium of 5,000 tons was awarded by the committee on prizes, it certainly was not for that use.

"What, then, was his discovery as to guano?

"He tells plainly what was his discovery in regard to the nitrates, and evidently considered that of more importance than the other.

"(2.) I can find no recognition by Peru of his claim or right, except the premium of 5,000 tons, and that is only the report of a committee, which seems never to have

been acted on. Is there any other document binding on Peru? If so, I would like to see it.

"(3.) Granting that Cochet had a valid claim, to whom did it descend on his death? Natural sons, by law of this country, can be legitimized and made heirs in two ways:

"One by a formal recognition, executed before a public officer in a prescribed way, by the putative father; the other by a testamentary recognition in last will.

"Both assume and require an act to be done by Cochet in his lifetime.

"I have no knowledge of any such act; and, in default of such act, his relatives now in France succeed to his rights.

"I write these things to you, not formally and as minister, but that I may call your attention in time to the character of proof required.

"Theophile Landreau (the French Landreau) is in this city, and has made a conditional sale of his rights, estimated by him at \$100,000,000, to a Chilian agguirré, to be offered to the Government of Chili for £300,000, or \$1,500,000.

"The privilege of purchasing at that rate extends for six months from September 1.

"As I wrote you before, if you are satisfied with your title, you ought to act very speedily, for the complications are daily becoming deeper.

"In the absence of any evidence as to the material points suggested, I can of course have no opinion on the subject, and you can scarcely expect me to use any official authority until I possess such facts, sustained by evidence, not merely by pamphlets and extracts from newspapers.

"I am, sir, yours, &c.,

"S. A. HURLBUT."

Mr. BLOUNT. When did you receive that letter?

The WITNESS. The usual time for a letter to come is about twenty-three days, and I presume I received this the last week in October.

Mr. BLOUNT. Did you receive it before you wrote your letter of October 27?

The WITNESS. (Referring to the letter of October 27.) This letter seems to be an answer to General Hurlbut's letter of October 1. It begins, "I have yours of the first instant."

Mr. BLOUNT. I see that, in this very letter, while complaining of his not standing up to your interests, and telling him what he might look for from men of all parties, provided he advanced your claim, you have this paragraph:

"For your own satisfaction, I may say that our staff of counsel, including such representative and various men as Governor Boutwell, Senator Eaton, Senator Conkling, Collector Robertson, ex-Congressman Lord, and Senator Blair, are absolutely agreed upon this as upon every other point material to the pending issues; and the most radical suggestions of policy as yet suggested have the hearty autograph approval of General Grant, who is now one of us."

What "radical suggestions" do you refer to as having the autograph approval of General Grant?

The WITNESS. In this suggestion was included the draft cable dispatch which I prepared for Mr. Blaine on the 13th of October and asked him to send; the approval which I refer to was indorsed on that draft.

Mr. BLOUNT. Give us substantially what that draft was.

The WITNESS. If the committee please, I would rather submit the text of the draft. I have not re-read the paper in months.

Mr. BLOUNT. You spoke of General Grant "as one of us." What did you mean by that—as stockholder, or what?

The WITNESS. I am glad to have that question asked, because that phrase is one which I have regretted; I was writing at considerable length and writing under a pressure to catch the closing steamer mail; I used a phrase there which was strictly true as it lay in my own mind and with reference to the idea which I wished to convey to General Hurlbut; but it is a phrase which, printed broadcast, might well be misunderstood; it is proper for me to state precisely what the relations of General Grant were to us at that time and what led me to use this phrase; I first sent the papers in this case to General Grant, I think, in June or July, while he was at Long Branch for the summer; I sent them with a note simply asking him to give them such attention as he might think proper, and that I wished at some future day to discuss the matter with him; I intended merely to bring the matter to his attention. Some time later (I should say in the latter part of September, perhaps, or in the first part of October) I had a conversation with General Grant on the subject, and I then suggested to him definitely that our people would be glad to have him become associated with us more or less prominently in the direction of the company; he replied at some length; our conversation lasted, I think, at least an hour, and in that instance, at least, I was not the chief talker. General Grant talked most of the hour. He discussed at very considerable length the general principles which he thought applicable to this case. The gist of his statement was this: "I shall not at present consider any

proposition to become pecuniarily interested with you; the disposition of the public to comment upon every business enterprise with which I become connected is such that I am increasingly indisposed to connect myself with any public corporation; but I have no hesitation whatever in expressing to you my views as to what your general rights are in the premises and what the government ought to do for you." He then recapitulated at considerable length similar cases—cases that had occurred which had called for the interference of the Executive in behalf of the rights of American citizens in foreign countries during his own administration; he went into considerable details and said expressly, after mentioning several of the cases: "These were much harder cases than yours. The right of the citizen to have the government interfere in his behalf in such cases was not so clear as your right is, as I understand the case." He summed the matter up by saying: "Mr. Shipherd, it will make no difference whether I am a stockholder with you or not, so far as my co-operation is concerned. I should do nothing for you if I were a stockholder except to aid you in securing from the government such help as in my judgment you are entitled to absolutely any way. I shall help you as a matter of fact in any and every way that I can, but solely as a citizen with reference to your rights as an American corporation. On that you may rely, and for the present please to understand distinctly that I do not wish to consider the question of becoming pecuniarily interested with you."

That conversation, I should say, was in the last of September or the first of October; I had a second and I think a third conversation with General Grant (along during October, I should say); the substance of his declarations in each instance was identical with the substance of his first declaration as I have given it—that we might rely upon his unqualified co-operation so far as our general rights were concerned, and that that co-operation would be in all respects as hearty and effective as though he were a stockholder; these being the facts I went away with that impression. I was at that time seeking simply the independent judgment of representative citizens and statesmen. I went away with the feeling that there had been a most important accession to the number of those whom I counted as our friends. As a matter of fact we were not seeking money at that time; it was immaterial to me whether General Grant took a pecuniary interest or not; on the contrary, my judgment was that if he did pursue the course which he intimated, and if, having no pecuniary interest with us, he gave us the benefit of such hearty co-operation as he promised, the help was going to be much greater than if he were to be a stockholder; therefore in writing to General Hurlbut I had this fact in mind, that we had obtained a most important accession to what I considered our circle; I wished to convey that fact to General Hurlbut; I wished to impress him with the fact, not that we were accumulating capital to bring a pressure to bear upon somebody, but that we were accumulating the independent co-operation of first-class men; with that in mind I used the phrase, "General Grant is one of us"; I say that I regret it since it is published, because it seems to imply more than I had a right to imply, and more than I intended to imply at the time.

MR. RICE. All this conversation with General Grant was after President Garfield's death?

THE WITNESS. My recollection is that it was not earlier than the latter part of September.

MR. BLOUNT. When did General Grant become a stockholder in the Peruvian Company?

THE WITNESS. He never did.

MR. BLOUNT. I understood you to say that he was not at that time a stockholder, and I presumed that you meant us to understand that he was later a stockholder?

THE WITNESS. No, sir.

MR. BLOUNT. You drew up a certain cable dispatch which you wanted sent to Minister Hurlbut from the State Department?

THE WITNESS. I made one draft as I have suggested.

MR. BLOUNT. You submitted that draft to General Grant?

THE WITNESS. Yes, sir.

MR. BLOUNT. And he indorsed his approval on it?

THE WITNESS. He made an indorsement on it which I will exhibit to the committee as soon as I can get at it.

MR. BLOUNT. Was that indorsement to be used at the State Department?

THE WITNESS. I did not so understand it. I will state the precise facts. I sent the draft to General Grant by a messenger with a note indicating (and I will submit that note also) that I would be glad to have his judgment on this draft. His indorsement was, I suppose, simply a reply to me. It was all the reply that was sent. I took the paper as addressed to me, without reference to any special use for it.

MR. BLOUNT. You say that General Grant was not one of you at that time. Is it true that at that time Mr. Boutwell, Ex-Senator Eaton, Ex-Senator Conkling, Collector Robertson, Mr. Scott Lord, and Senator Blair were your counsel—as you state in your letter of October 27?

THE WITNESS. They were all counsel, as I then understood it, and they were abse-

lutely counsel, with possibly the exception of Senator Conkling. I will state the precise facts in regard to his retainer. It having been decided to tender him a retainer it was agreed, after some consultation, that Senator Blair should write him on the subject, and I was advised that he did so; I was further advised that the letter and the papers which were sent with the letter reached Senator Conkling at a time when he was confined to his room with illness, and that they did not receive immediate attention for that reason; subsequently Mr. Lord, who had been, as I was informed, for several years a law partner of Mr. Conkling, and was personally very intimate with him, volunteered to write a second letter, and, as I was advised by Mr. Lord, he did so; a few days after that second letter was written Mr. Lord came to my office and handed me a letter, which he assured me was an autograph of Senator Conkling's, which letter I read, and which stated very circumstantially that he had received the communication of Senator Blair and the papers, and that he had examined the case far enough to say that he saw no reason why he should not accept a retainer as counsel, and that he was prepared to accept such retainer; subsequently Mr. Lord advised me that he had met Mr. Conkling in the city and had a professional consultation with him on the case; still later (some weeks later) I called on Senator Conkling at his office in New York, and had a personal conference with him, explaining to him the special reasons why I had not called upon him sooner in pursuance of a correspondence which associate counsel had conducted with him; he remarked that he had been expecting to see me, and I think he said that he was a little disappointed at not having seen me sooner; he received me very cordially indeed; he took down the papers from the top of his desk, and we had a little chat, the general result of which was an intimation on my part that for the moment we had not any special work for him; that we did not need special work to be done by him at the time, and that as soon as we were ready to call upon him for service I would send him a retainer, to which he replied that whenever we were prepared he would be glad to enter upon duty as counsel. That is the precise statement of the facts. In connection with the report made by Mr. Lord of the consultation which he had with Mr. Conkling, I understood Mr. Lord to say that he had gone over, at least in a summary way, the general points of our case, and that Mr. Conkling concurred in the views of Mr. Lord and the other counsel. On that statement by Mr. Lord I included Mr. Conkling's name in the list of counsel here mentioned.

Mr. BLOUNT. I find in your letter of August 19 the additional name of Ex-Senator Cragin, of New Hampshire, as counsel for your company.

The WITNESS. Yes, sir.

Mr. BLOUNT. And you say in this letter, "Senator Logan, Ex-Senator Conkling, and others will be added in due course." You have already explained as to Ex-Senator Conkling. Was Senator Logan, or any other counsel, added after that?

The WITNESS. Senator Logan was not added.

Mr. BLOUNT. And you have this expression, "And from these names you will safely draw your own inference." Again, in your letter of October 27, you say, after naming these gentlemen, "The significance of all this you need no aid from me to estimate." You speak of Hon. W. E. Chandler as one of your counsel, and you say that he will probably be Mr. Blair's colleague next year. Is it true that Mr. Chandler is one of your counsel, or was?

The WITNESS. It will be observed that the name of Mr. Chandler is connected with the names of Senator Logan and Ex-Senator Conkling, and others who are to be added as counsel.

Mr. BLOUNT. It does not read in that way.

The WITNESS. That is the way in which the original letter reads unmistakably. The printer, I see, put in a semicolon which is not in the original. The copulative conjunction "and" should come in after Senator Blair's name; and that copulative indicates sufficiently clearly the intent. At any rate, there is no doubt of the intent. It was intended to speak of the engagement of these gentlemen in the future tense.

Mr. BLOUNT. Did you afterwards employ William E. Chandler?

The WITNESS. I will suggest the facts; I shall not state them fully; at the time when the letter was written it had been determined to tender a retainer to Mr. Chandler; that determination was reconsidered and no retainer was ever tendered to him.

Mr. BLOUNT. You mention the fact that Mr. Chandler will probably be Mr. Blair's colleague next year, and you say "from these names you may safely draw your own inference." What do you mean by that, in your communication with General Hurlbut?

The WITNESS. I do not know that I can make the statement any plainer. The general idea that lay in my own mind was that if General Hurlbut went through this list (thoroughly intelligent as I presumed him to be as to the character and standing, professionally and otherwise, of all these gentlemen) he would see, in the first place, that this was not a one-sided political enterprise, and, in the second place, that gentlemen whose professional and personal judgment was entitled to very high respect were satisfied that there was at least enough in the case to make it worth their while to be

connected with it. In a word, I thought that the inference which General Hurlbut would draw was that Mr. Shipherd was not alone in this matter, and that, if he were mistaken, he was in very respectable company.

Mr. BLOUNT. I find in your letter of June 2 to Mr. Hurlbut, where you mention the names of various representative gentleman with whom you are already, or shall soon be, in confidential negotiations, the name of E. D. Morgan. State whether or not he is in your company.

The WITNESS. I cannot undertake to answer personal questions of that sort, for reasons which I am sure will need no vindication in the committee. I can only state generally, in addition, why I prepared that list, and how far I meant to take responsibility in using the names there.

Mr. BLOUNT. State to the committee what gentlemen you were, at that time, in confidential negotiations with.

The WITNESS. That I cannot undertake to state to the committee.

Mr. BLOUNT. You decline to give their names?

The WITNESS. Yes; it is a purely private, personal matter.

Mr. BLOUNT. I shall insist hereafter on this question being answered. Where did you first meet Mr. Blair?

The WITNESS. At my office in New York.

Mr. BLOUNT. How did Senator Blair happen to come to your office?

The WITNESS. He was introduced by Ex-Senator Cragin.

Mr. BLOUNT. Ex-Senator Cragin was at that time one of the attorneys of your company?

The WITNESS. Yes.

Mr. BLOUNT. Was it on Mr. Cragin's advice that you employed Senator Blair?

The WITNESS (after some hesitation). I think that that is going into matters strictly personal; I cannot go into them any further than is absolutely necessary to throw light on the general issue. That I have endeavored to do fairly. If I am to be inquired of as to what passed between me and counsel, and if purely private negotiations are to be pursued by the committee, then, as I understand it, the limits that are defined will be exceeded. I cannot undertake to open these things to this committee and to the whole country.

Mr. BLOUNT. Then you decline to state whether or not Mr. Cragin advised you to employ Mr. Blair as counsel?

The WITNESS. I do.

Mr. BLOUNT. He was brought to your office by Ex-Senator Cragin?

The WITNESS. I have so stated.

Mr. BLOUNT. How did you learn that Mr. William E. Chandler was likely to be Mr. Blair's colleague in the Senate?

The WITNESS. I decline to state.

Mr. BLOUNT. Had you been consulting on matters of this sort? Had you been investigating the probabilities of Mr. William E. Chandler's being elected United States Senator, with reference to the advancement of the interests of the Peruvian Company?

The WITNESS. Not in the slightest. I only learned of the matter casually, and after I had intended to offer him a retainer.

Mr. BLOUNT. When Senator Blair came to your office you suggested a retainer, and he declined on the ground that it was his official duty to forward the claim?

The WITNESS. Not on that ground.

Mr. BLOUNT. You are so reported (reading from the report of the testimony): "I understood him to decline on the ground that possibly the question in some form might come before Congress for action in such a way that he would be compelled to act upon it officially." In what way was he likely to be called upon to act in the case officially?

The WITNESS. I do not think that any specific suggestion was made. My recollection is that the general suggestion was made; that this thing might come before Congress, and in that case he obviously ought not to be in any way prejudiced by having been a retained counsel in the case.

Mr. BLOUNT. This is your language: "Towards the close of the interview the Senator, having freshly assured me that the interests of the whole United States would impose upon him the official duty of forwarding a legal inquiry into the validity of the claim and of asking the President to take such grounds as might be expedient," &c.

The WITNESS. Yes, sir, I think that is the substance of it. I doubt whether the reporter got the exact phraseology; but that is substantially correct.

Mr. BLOUNT. Are you reported substantially correct as saying that his position as Senator would impose upon him the official duty of forwarding a legal inquiry into the validity of the claim?

The WITNESS. Yes, sir; I think that is substantially the statement.

Mr. BLOUNT. He came from your office to Washington.

The WITNESS. I heard so.

Q. Was there not an understanding in the conversation that he was to go to Washington?—A. He told me he was going to Washington.

Q. Did he not say to you that he would see the Secretary of State and telegraph or write you?—A. He said something to that effect. That was the purport of it.

Q. He did telegraph you, did he not?—A. He did.

Q. Did you not understand at the time you were talking with him that he was to go to Washington on business for the Peruvian Company?—A. No, sir. He told me distinctly that his residence was in Washington (his actual residence, his house, was in Washington), that he was on his way there, and that, soon after his arrival, he would have a conference with the Secretary of State.

Mr. BLOUNT. Did you employ Mr. Blair especially in order to get interviews with the Secretary of State, or what reason had you for his employment?

The WITNESS. My idea in retaining Senator Blair was an idea of several parts; that is, I had several reasons in my mind for tendering him a retainer; the primary reason was (under advice given to me) the probability that he would be able (if anybody would be able) to induce Secretary Blaine to give this matter prompt attention; the Secretary, as I understood it, was overburdened with official duties, and the probability was that the matter might be indefinitely neglected, unless some personal friend, or some individual for whom he had special respect and whose wish he might be disposed particularly to regard, should request him to give it immediate attention.

Mr. BLOUNT. Did you have any message from the State Department after you sent your communication of May 23 to the President, other than the verbal message brought to you by General Hurlbut?

The WITNESS. I think there is printed and before the committee all the correspondence. It is a statement of all the interviews that occurred between me and the State Department prior to the interview of July 25.

Mr. BLOUNT. Then you had no special attention given to this claim until after you had your agreement with Senator Blair?

The WITNESS. No, sir.

Q. And he brought about the interview?—A. Yes, sir.

Mr. BLOUNT. I find in Mr. Blaine's letter to you of December 3 this language:

"SIR: General Stephen A. Hurlbut, our minister to Peru, acting with perfect official propriety, returns to the State Department the letters you have addressed to him in regard to claims against that government, in which you profess to have an interest. During the first interview you had with me in August last, I advised you that it was not proper for you to correspond with the American minister in regard to private claims, and that the necessities and courtesies of the situation required a minister to give attention only to such private interests as were submitted to his attention with the sanction and the responsibility of the department. You indicated your recognition of the fitness of this rule, and your intention of complying with it; and you mentioned the names of several distinguished lawyers, well known to the country, who would soon proceed to Peru as the representatives of your claims. I promptly gave you the assurance that if any one of the eminent gentlemen named by you should go to Lima on any professional business, he could rely on the courteous attentions and kindly offices of the American minister in his aid. Quoting confidently, as you did, the alleged opinion of my distinguished predecessor, Mr. Evarts, as to the validity and value of the Cochet claim, which you represented, I told you that I would instruct General Hurlbut to examine into its character and make report thereon to me, which duty he faithfully performed. Beyond this you had no right to demand or expect any aid from the State Department, and your holding a private correspondence with General Hurlbut was a gross infraction of every rule of propriety."

You stated in your testimony the other day that Senator Blair told you to quote the Secretary strong, much more strongly than anything the Secretary had ever said to you. To whom did he mean you should quote the Secretary of State?

The WITNESS. I do not know.

Mr. BLOUNT. I will read again from your testimony: "At this point I will state another circumstance which made a great impression on my mind. * * * A week or two before"—

The WITNESS. I think that is a misprint. I think I said, "A week or two after."

Mr. BLOUNT (reading). "Senator Blair said to me: 'Now, Shipherd, let me tell you something: don't you hesitate to quote the Secretary, and don't you hesitate to quote him strongly. Quote him a great deal more strongly than anything the Secretary ever said to you, and you will be inside the facts. Don't ask me any questions; but if you have any confidence in my advice, take that advice.'" When Senator Blair was advising you about quoting the Secretary, what had he in mind? Was it your communication to General Hurlbut?

The WITNESS. It would be utterly improper for me to undertake to state what, as a matter of fact, Senator Blair had in his mind. I had no access to his mind. I can only answer objectively, that he gave me no instructions and said nothing that made

any impression on me that he had in his mind any particular individual to whom I was to quote the Secretary. That testimony, I think, is correctly reported. At any rate it corresponds closely with my recollection of the exact phraseology used. I do not know that I can aid the committee in construing it.

Mr. BLOUNT. Did you quote the Secretary to the minister at Lima?

The WITNESS. My letters will show. I will not undertake to state as to such a mass of correspondence, what quotations I may have made. Whatever quotations I made were made, not, as I was advised, in stronger terms than were used in addressing me, but were absolutely conformed to the facts. The advice, however well meant, is advice which I never acted upon, and which no man could ever induce me to act upon. I conformed myself throughout to the statement of facts; and all my correspondence from first to last I am prepared to have made part of this testimony as literally and absolutely true, to the best of my knowledge and belief.

Mr. BLOUNT. Was that statement of Secretary Blaine, as to the first interview you had with him in August, correct in as far as it relates to his objection to your corresponding with Mr. Hurlbut?

The WITNESS. As to all that which was read to me from Secretary Blaine's letter, the exact truth is as stated in my letter to Mr. Boutwell.

Mr. BLOUNT. Answer whether or not the statement is correct.

The WITNESS. Then I would like to have it read in installments.

Mr. BLOUNT (reading). "During the first interview you had with me in August last I advised you that it was not proper for you to correspond with the American minister in regard to claims, and that the necessities and courtesies of the situation required a minister to give attention only to such private interests as were submitted to his attention with the sanction and responsibility of the department. You indicated your recognition of the fitness of this rule." I ask you if that occurred?

The WITNESS. Nothing of the kind occurred, with this single exception: that I called the Secretary's attention to the fact that I, being especially desirous to observe the proprieties, had mailed to the President direct a copy of the long letter which I had written to General Hurlbut at his request, giving the inside facts. That was my volunteered suggestion; not a word escaped the Secretary of the character to which he refers; not a syllable, not a hint of anything of that kind occurred at that interview.

Mr. BLOUNT. Restate the conversation in which Senator Blair said that he had been advised that he could take a fee—in which the fee contract was made absolute.

The WITNESS. My best recollection is that the final decision of the matter was some weeks subsequent to the 25th of July.

Q. What was that contract?—A. Oh, I cannot undertake to give that.

Q. Do you decline to state it?—A. Most emphatically.

Q. What amount did you pay him or agree to pay him?—A. I decline to state.

Q. How much did he pay you back?—A. He paid back all that he received.

Q. Did that include traveling expenses?—A. There was no deduction; he paid back absolutely the precise amount he received.

Q. When was it paid back?—A. I think in November—several weeks before the meeting of Congress.

Q. Can you not state the time more closely?—A. No, sir.

Q. Was it before or after your interview of November 3d with Secretary Blaine?—

A. I think it was after. I think it was very soon after.

Q. The interview at which Mr. Cilley was present, was that at the State Department?—A. No, sir.

Q. That interview, at which Senator Blair and Mr. Cilley were present, and in which the question of a protectorate of Peru was discussed, was at the house of the Secretary?—A. Yes. I am not prepared to state that Senator Blair discussed the question of a protectorate of Peru. The suggestion of a protectorate came up; and the Secretary, as I have already testified, spoke at length on that point. So did Mr. Cilley, and so did I. My recollection is that the Senator was substantially, if not wholly, a listener. He may have made some allusion to the subject; but I do not recollect that he made any suggestion or gave any advice.

Q. From whom did the suggestion as to a protectorate come?—A. My impression is that it came from Mr. Cilley; it was a favorite idea of his. I know that he had discussed it with me previously.

Q. Had you not mentioned the matter in a letter to General Hurlbut before that?—

A. I do not recollect about dates. I may have done so. The correspondence will show.

Q. Was it not understood beforehand (when Mr. Blair, and Mr. Cilley, and yourself went there) that that matter of a protectorate should come up?—A. Oh, no, sir.

Q. What was the object of Cilley's visit?—A. I have already testified to that. He wished to meet the Secretary for the purpose of informing his own mind as to the attitude present, and probably prospective, of the United States Government towards the trouble in Peru, towards the various schemes for settling it, and especially in reference to our scheme.

Q. Was he interested in the Peruvian Company?—A. I have already testified that he was not.

Q. Not at any time?—A. Not at any time, except as I stated. He stated to me that he considered our success a condition-precedent to his own business plans and interests already vested there.

Q. What was your idea in taking counsel as to whether you should make any statement before this committee concerning the action of Senators in this matter? Was not that a proper question and was it not for the committee itself to determine its own jurisdiction?—A. I have already stated to the committee the advice received from counsel. I do not think I can go any farther in the premises.

Q. Was it not because you did not wish to make any statements as to the action of Senators?—A. On the contrary, the suggestion was first made to me by counsel, in a general, cautionary way, that I must not transgress the proprieties of courtesy existing between the two houses; in other words, I was advised that if I should testify before a House committee in regard to transactions of Senators the Senate might consider it a breach of its privileges. I was cautioned simply not to make a mistake. The advice came in that suggestive way. It was not sought by me.

Q. When Senator Blair told you that you might quote the Secretary, and quote him strongly, did you understand him to be speaking by authority of the Secretary?—A. Oh, no, sir; I understood simply that he was giving me his own impression as to the actual condition of the Secretary's mind, and as intending to encourage me to build confidently on the general assurance that the State Department would be with us.

Q. Do you know anything more than you have already stated as to Mr. Hurlbut's connection with the *Crédit Industriel*?—A. Yes, sir.

Q. Please state it.—A. I would prefer to be excused. I am already charged with pushing an attack on a dead man. I do not wish to deserve any criticism of that kind.

Q. In the conversation that you have recited with Secretary Blaine you have stated everything in the way of an accusation against General Hurlbut, and we simply wish to know whether you have any additional facts. For instance, you made a statement that he was living in a house placed at his disposal by Suarez and the *Crédit Industriel*; that the ladies of his family were escorted about in Lima by Suarez, &c. Have you anything more positive than circumstances like these?—A. I think there is nothing further except additional incidents, allegations of the same sort. I must call the attention of the committee to the fact that I have stated at the outset that these allegations came to me in newspapers, and from gentlemen arriving from Lima; that I only gave them as hearsay, and that I only mentioned them here because they formed part of my conversation with the Secretary. I brought these allegations to his attention, and I certainly did not wish to expand unnecessarily on that point.

Q. Give to the committee the names of the gentlemen that you mentioned to the Secretary in that connection.—A. I will give the names to the committee privately, but I do not feel at liberty to give them to the reporters. I do not think I ought to give them to the whole country.

Mr. Blount submitted the question for the decision of the committee, but the hour of adjournment having arrived, no action was taken upon it, and the committee adjourned till to-morrow.

WASHINGTON, D. C., *April 11, 1882.*

The examination of Mr. JACOB R. SHIPHERD was continued as follows:

Mr. BLOUNT (to the witness). When we adjourned yesterday I was asking you for the names of the six gentlemen who, you had stated to the Secretary in an interview with him, could give him information in reference to the connection of General Hurlbut with the *Crédit Industriel*. I desire to ask you now whether or not the information which these gentlemen have consists merely of reports, or whether they will be able to substantiate any facts, such as the residence of Suarez with Mr. Hurlbut, or the constant association of Suarez with Mr. Hurlbut's family, and things of that sort. Can they state these things as facts, or simply as reports? The committee desires to know this in order that it may determine whether it will be important to summon them.

The WITNESS. If I was understood to say that I gave the Secretary the names of six gentlemen, I must have been misunderstood. There were only two, I think, that I had in mind. One of those gentlemen spoke to me particularly (of his personal knowledge) as to the public relations of Suarez to General Hurlbut and his family. He said that he was frequently at the legation, and that he believed he never had been there without finding Suarez there. He also spoke of his seeing Suarez about the city with the American minister, &c. (speaking of his personal knowledge). The other gentleman spoke more particularly of the influence of these facts among the leading people of the town, speaking of his own knowledge, and also speaking as a member of

one of the leading clubs where the matter was discussed; and he stated other instances within his own knowledge, of the general impression made in the city by this conduct on the part of the American minister. I think that these are the only two persons whom I mentioned to the Secretary. There were one or two others who furnished me with confirmatory information, but I do not think I mentioned them to the Secretary. I had not them particularly in my mind.

Mr. BLOUNT. Will they testify as to facts?

The WITNESS. One of them, for example, told me that Suarez applied to him to lease his house for the American minister; and he thereupon expressed surprise that Suarez should be interesting himself in that way in providing for the American minister.

Mr. BLOUNT. Is that gentleman in New York City?

The WITNESS. I think not. I think he has returned to South America.

Mr. BLOUNT. Would you have sought the aid of the American Government in connection with this claim if it had not been for the condition in which Peru was at the time?

The WITNESS. That was a matter of speculation. I do not know that I speculated so broadly as that. What I took into account was the facts then existing; and I thought that the situation, as it then existed, was especially favorable; and, on consulting Peruvian gentlemen within reach, my impression in that regard was very greatly confirmed.

Mr. BLOUNT. I find in your letter of June 2, to Mr Hurlbut, this language:

"Sixth. To simplify the situation by removing ail issue, we propose the agreement with Peru. If she were strong she would, of course, resist, and make another Landreau record to blister the pages of history, but—

When the devil was sick,
The devil a monk would be.

And at the moment when the choice must lie between Chilian robbery and the comfortable payment of an admitted debt, even Peru may choose to pay. It is certain that we can make her choose it with eagerness, and so choose it now that she cannot hereafter repudiate. *This is probably the first hour since Cochet's rights came into being when they could practically be enforced.*"

Did this represent the views of your company?

The WITNESS. That was the general impression on my mind, and was based more particularly on the record in the Landreau case. I thought that on such a record probably Peru would not have listened to this claim (no matter what merits it might have) theretofore.

Mr. BLOUNT. And you also say in the same letter:

"If the foregoing suggestions are within the facts, it results:

"1. That the United States Government has now the clear right as against Peru, Chili, and all the world to intervene peremptorily to adjust all questions now pending at Lima.

"2. That it is its duty so to intervene, because it alone can decree and enforce justice in the premises."

Were those the views that you were seeking to impress on Mr. Hurlbut as the American minister?

The WITNESS. Yes, sir; at the time. Whatever views are expressed there are the views which I thought it proper to bring to his attention at that time.

Mr. BLOUNT. I mean whether the idea was to induce him to bring about the application of those views upon the Peruvian Government.

The WITNESS. I understood these to be the identical views held by the Secretary of State; and, in bringing them to Mr. Hurlbut's attention, my recollection is that I expected chiefly that he would recognize in this statement of our views a restatement of the views which he knew the Secretary to hold. I certainly had no idea of propounding to him a theory independent of the theory on which the Secretary of State was acting, or of suggesting anything that would lead him beyond the instructions which he had received from the Secretary of State.

Mr. BLOUNT. I find on page 16 of the same letter, after naming quite a number of gentlemen whom you say you would be in confidential communication with, the following:

"As I intimated to you, with a view to nationalizing the corporation, stock will be allotted to select lists of the leading capitalists in Boston, Hartford, Philadelphia, Baltimore, Cleveland, Cincinnati, Chicago, and Saint Louis; such lists to be made under expert local advice, and each city to be represented in the direction; the board of trustees to consist of, say, 21 members.

"The very best executive and administrative talent will be employed, both in New York and in Peru, and such relations with the governments of all the countries interested will be cultivated as shall tend above all else to unqualified confidence and respect."

What was your idea for nationalizing this corporation? Was it your object to build

up a sentiment in this country in favor of this claim by influencing capitalists in these different cities in its favor?

The WITNESS. Not at all. I am not aware that I have ever directly endeavored to build up a sentiment in favor of the claim. The object that I had in view in negotiating with representative gentlemen was to bring into the management of this company representative men from different parts of the country, representing various interests, so that the management of the company should be, in the best sense, national, and should in that respect be entitled to the confidence of the Government of the United States and of the people at large.

Mr. BLOUNT. In your letter to Mr. Hurlbut of August 19, 1881, you state—

“You perceive that our programme as approved, unqualifiedly, by the department is:

“1. Unqualified demand for payment of the Landreau claim.

“2. Proper attention to the demand about to be made for Cochet's property.

“3. Peremptory stay of all negotiations touching the cession of guano, or nitrate, or territory, pending final adjustment of these American interests.”

Was it your judgment that it was Mr. Hurlbut's duty to take these positions in his intercourse with the Peruvian Government?

The WITNESS. I did not intend to instruct, or to suggest any instructions to him about the positions which he should take. I merely wrote to him, in pursuing correspondence which he himself had initiated, and which the Secretary had distinctly encouraged. I merely wrote to him intending to give him an informal view of what was, as it may be said, informally passing between the State Department and myself, so that that might throw light upon any formal instructions which he received. I did that with the more interest on account of the suggestion which Senator Blair had made to me that the Secretary was confining himself, for official reasons, to relatively narrow limits of statement towards me; and I presumed that, quite likely, he was doing so also in his dispatches. I never for a moment had in my mind any such thing as an expectation or a desire to influence General Hurlbut in his official action, except to encourage him to proceed in the line in which I supposed the Secretary of State was instructing him.

Mr. RICE. You say that General Hurlbut initiated the correspondence.

The WITNESS. It was initiated at his request.

Mr. RICE. You wrote him the first letter to Washington, did you not?

The WITNESS. That was merely informal.

Mr. RICE. And you wrote him all the first letters, did you not?

The WITNESS. What I mean is simply this: It was at his request that I wrote to him the important letter disclosing in detail the outlines of our scheme; and it was in pursuance of the correspondence thus initiated at his request, that I was writing once again.

Mr. RICE. That request was made orally in the conversation which you had with him in the Fifth Avenue Hotel, in New York.

The WITNESS. Yes, sir.

Mr. RICE. It does not appear in any letter of General Hurlbut's?

The WITNESS. No, sir. It was accompanied by his giving me his address, which was then and there written. That was all the writing that there was.

Mr. BLOUNT. You said in that same letter:

“All that need be said under this head is summed up in the assurance that we address ourselves to you in exactly the same manner in which we are welcomed by the Secretary himself; we supply to you the identical information supplied to him, and shall be more than content if you as heartily stand for us at the front as he stands for us at headquarters.”

The WITNESS. That is it precisely.

Mr. BLOUNT. You have already stated that this was the position, and this the policy, in reference to your claim which the Secretary promised you to stand up for at the State Department.

The WITNESS. This policy, as defined here, was the policy which was discussed, and unqualifiedly approved by the Secretary, as I understood, and as Senator Blair told me at the time he understood.

Mr. BLOUNT. Was this communication submitted to Senator Blair?

The WITNESS. I cannot say as to this particular letter whether it was read to him or whether it was not read to him. I can say, generally, that nearly, if not quite, every letter that I wrote to Mr. Hurlbut was read to Senator Blair, either before it was sent, or soon afterwards. The relations between us were absolutely intimate; and I sought his advice at every step and on every point. I did not consciously withhold anything from him. On the contrary, I read to him, by the hour, in the aggregate, from my letter-book, whenever he was in the office.

Mr. BLOUNT. On page 19 there is a letter from Simon Camacho to Manuel Arizola. Who was Simon Camacho?

The WITNESS. I have no responsibility for the name of Simon Camacho. That

name is inserted by General Hurlbut, and he alone must account for it. There was nothing in my letter to show who the writer was. If General Hurlbut had any opinion about it he must have got some data for that opinion at Lima.

Q. Was it the Venezuelan minister who wrote this letter to Dr. Arizola?—A. I cannot undertake to state to the committee who the author of that letter was.

Q. Do you decline to state it?—A. I do, on the ground that the authorship of that letter is a purely personal matter; that it was not disclosed by me to Mr. Hurlbut, or anybody else; and that, therefore, I am not responsible for any guesses in respect to its authorship. I am here to be questioned and to answer as to any of this correspondence for which I am responsible.

Q. This letter from Camacho to Arizola was sent by you?—A. Yes, sir.

Q. It was sent in the interest of your company, was it not?—A. Yes, sir, secondarily. Primarily, as it was represented to me, it was sent in the interest of Peru.

Q. The only interest that you had in Peru was in regard to your claim?—A. So far as I was concerned that was my interest, but I understood the writer of this letter to write it in the interest of Peru, and to argue from the Peruvian standpoint.

Mr. BLOUNT. In this letter, on page 21, is the following language:

“7. No demand has yet been made upon the Peruvian Government for the possession of this guano, but such a demand will be made in a few weeks by a commissioner to be sent out.

“If the executive shall accede the demand and freely consent that the owners of this great property may take it at once without the hinderance of Peru, then these owners must demand it of the Chilians, and if the Chilians detain it for an hour they will make themselves liable instantly for a tortious conversion, and you may be sure the Washington Government will make short work with them. Upon this point the owners of this great interest have long ago received the most sweeping assurances directly from the American Executive.”

Was not that proposition directly in the interest of your company?

The WITNESS. That calls for my opinion simply. I suppose that this is a letter for which I am in no way responsible.

Mr. BLOUNT. But I ask you if this letter which you sent, written by this gentleman whose name you conceal, was not written in the interest of the Peruvian Company, so far as the paragraph which I have just read is concerned?

The WITNESS. I so understand it.

Q. Was it not written to Dr. Arizola, the representative of your company in Peru?—A. He was not the representative of our company in Peru.

Q. Did you not transact business of the company through Dr. Arizola?—A. Not as agent of the company in any way. If we transacted business through him, we simply transacted it through him as through a person who was willing to co-operate with us to the extent to which he may have co-operated. He was never in any sense whatever the representative or agent of this company. He never was responsible for us or we for him.

Q. Was not this letter sent to him on the idea that it was to be used in a co-operative movement in the interest of your company?—A. Only secondarily, so far as I understood anything about the correspondence. My understanding was that Mr. Arizola and President Calderon, to whom he stood very near, would look at our scheme solely and (to emphasize it) selfishly from an exclusively Peruvian viewpoint—the question being what advantages might result to Peru by co-operation with this Peruvian Company. We never expected them to do anything whatever in the interest of the Peruvian Company as such.

Mr. BLOUNT. In this same letter from Camacho to Arizola the following paragraph occurs:

“9. If Peru—I do not admit the possibility—should refuse to deliver the guano demanded, and to pay at once the value of so much as is missing, then this refusal would be an original denial of justice directly to American citizens, and their government would then enforce their right against Peru herself, and sad indeed would be her condition then.”

Does not that paragraph, in your judgment, relate exclusively to the Peruvian Company?

The WITNESS. I do not understand it to relate exclusively to that, because, on the face of it, the suggestion is that Peru herself would be concerned, and very deeply concerned, and vitally concerned, in case events should take a certain turn.

Mr. BLOUNT. Was not that a very important fact which you wanted Mr. Calderon to keep in mind?

The WITNESS. That was a point which I had considered as important. I discussed it, I think, with the writer of this letter; and whether the idea was original with him, or whether he had taken it from me and considered it worthy of restatement is a matter of which he only can give an account.

Mr. BLOUNT. Did the Secretary of State ever commit himself to you, in substance, to such a position on the part of the government, as is stated in paragraph 9 (just read)?

The WITNESS. I do not think he did, in the terms in which it was put there. I made a suggestion to the Secretary of State, I think at our first interview, as a suggestion which had been made to me by counsel, and which seemed to me worthy of consideration, that if it were true that the claim or the title which the Peruvian Company now asserted had not heretofore been asserted, and therefore never could have been denied, and if that title should first be asserted by American citizens and the Peruvian Government should, on that first assertion, refuse to entertain it, the original denial of justice would be a denial to American citizens. I suggested that to the Secretary of State. He made some cautious reply equivalent to this, I think: "There may be something in that." I think that is as far as the Secretary went. At any rate, I am not aware that I ever undertook to quote him, even as far as that.

Mr. BLOUNT. Paragraph 13 of the letter from Camacho to Arizola is as follows:

"13. I may say further concerning these gentlemen, whose identity is known to me in detail, that they include the nearest personal and political friends of the Executive, and not only of the present Executive, but of the Vice-President as well, who will succeed to the Presidency in case of President Garfield's death. They also include representatives of the most powerful money corporations in the country, and you may rest absolutely assured that in dealing with them the Peruvian executive is for all practical purposes dealing directly with the power and the honesty of the United States itself. Once established in their great property in Peru they would be protected, if necessary, by the entire power of their government, no matter who the acting Executive might happen to be."

What do you understand by the declaration there that "the Peruvian executive is for all practical purposes dealing directly with the power and the honesty of the United States itself"? Do you understand it to mean that the United States is backing the Peruvian Company in this claim, and that the connections and friends of the present Executive, and (in case of his death) of his successor, all make up a combination of influence from which it can be assuredly inferred that the government itself is at the back of the Peruvian Company in what it is doing and saying?

The WITNESS. I do not think I ought to go far in giving my impressions of that letter. It seems to me tolerably plain in its phraseology. Whether it was in the Spanish I do not know, but in the English it is; and it certainly was not my letter.

Mr. RICE. But you sent it to Lima?

The WITNESS. It is a letter which I forwarded. It was written (so far as the writer was concerned) exclusively in the interest of Peru, and was only used by me because I deemed it of collateral help. I do not think that I have any right or authority to undertake to construe the letter apart from its phraseology.

Mr. BLOUNT. Then you decline to construe that letter?

The WITNESS. I do, with all respect.

Mr. BLOUNT. In the 14th paragraph of this same letter it is said, "they [meaning the people of the United States] are willing, as in the present instance, to forbid the victor an extreme cruelty upon the vanquished, and for the rest their only desire is to see every republic cultivate the arts of peace, and become happy and prosperous within its own borders."

There is a representation of the policy of the government. I wish to call your attention to it, as also to paragraph 15, as follows:

"15. I am able to tell you, on the highest authority, that the Department of State has long ago notified Chili in the plainest words that she will not be permitted to take any territory from either Peru or Bolivia, except it be found that there is no other possible way of securing her proper war indemnity. I am able, on the same authority, to tell you that she (Chili) has been notified that American citizens have filed at Washington their claim as owners of all the guano now in Peru, and that for every pound she takes she must hereafter account to the United States, and that she has also been notified that no cession of territory or property by Peru will be permitted until the Cochet and Landreau claims have first been provided for."

Is that true which is stated in paragraph 15 as to the position of the government?

The WITNESS. I do not see why I should be called upon to contradict or confirm a statement of that kind.

Mr. BLOUNT. I call your attention to paragraph 16 of the same letter:

"16. More than this, there is help for Bolivia, too."

"The owners of the Cochet rights are clear-eyed men who see far into the future. Their first interest—I mean now their *own* first interest—is to see Peru restored to all prosperity. While they will not meddle in any quarrel not their own, they cannot allow any terms to be inserted into the treaty of peace which will so cripple Peru or Bolivia as to affect their own commercial plans, and they will not allow any such terms to be inserted. Upon this you may safely rely."

Was that the position of the company at that time?

The WITNESS. I beg to be excused from discussing that.

Mr. BLOUNT. I have called your attention to all these paragraphs, and I want to know whether you saw the letter containing them before it left this country.

The WITNESS. I did not see the Spanish. I saw the translation of the letter which I inclosed.

Mr. BLOUNT. And, in order to help the Peruvian Company, you contrived, through the American minister, to have this paper placed in the hands of Dr. Arizola, who, you say, was very intimate with Mr. Calderon?

The WITNESS. I have already testified on that point as to the facts.

Mr. BLOUNT. Did you consider that it was the right thing for you to do, with your relations such as you say they were with the Secretary of State, and with Senator Blair, and with Minister Hurlbut?

The WITNESS. I did.

Mr. BLOUNT. Do you think it was a right thing for Mr. Hurlbut to do to take papers that represented his own government in that way, and to aid in putting them in the hands of Mr. Calderon in order to influence the action of Peru?

The WITNESS. I do not wish to pass judgment on what General Hurlbut did. I only called attention to the important fact that I placed in his hands this translation so that he might know what kind of a letter it was which he was asked to deliver; and I left it for him to judge as to the propriety of it. It was he who, with that translation before him, delivered the original letter.

Mr. BLOUNT. But you sent it down because you thought it would help the Peruvian Company?

The WITNESS. I have testified as to the facts.

Mr. BLOUNT. Was not the writer of this paper the Venezuelan minister?

The WITNESS. I beg to be excused from answering that question.

Mr. BLOUNT. Did not this letter relate, all the way through, to the claim of the Peruvian Company?

The WITNESS. Only as it shows on its face.

Mr. BLOUNT. The only exception on that point which I find in the letter is paragraph 19, as follows:

"19. From the first Mr. Shipherd has sought to reach Elmore, but always in vain. He has, therefore, freely consulted Mr. Tracy, but Mr. Tracy could only answer for himself, and could not of course bring anything to the notice of the Executive. I have, in the exigency, volunteered to place the facts within the President's reach, and having done so my duty is finished. In answer to questions directly asked me, I have not hesitated to express the belief that most eagerly would Peru embrace this great opportunity. I shall be compensated for this long letter if I can have immediate official assurance that I have not given bad advice."

Did the writer of that letter have any other object in writing it, except to further the interests of the Peruvian Company, and to give good advice to Calderon?

The WITNESS. The paper must speak for itself. I am not willing to undertake to interpret it.

Mr. BLOUNT. In the letter from Mr. Hurlbut to Mr. Blaine, of November 2, 1881, is the following paragraph:

"I presented these defects to Mr. Shipherd, who does not like my criticism, and writes to Mr. Arizola that he can get on quite well without me, as he has the whole government and all their friends on his side and pledged to his scheme."

Did you write such a thing to Mr. Arizola?

The WITNESS. I have no recollection of ever making any such statement to Mr. Arizola or anybody else. If Mr. Hurlbut had inclosed with this a copy of my letter to Mr. Arizola, that would have spoken for itself.

Mr. BLOUNT. I find in a letter from you to Mr. Hurlbut, dated November 15, 1881, the following:

"SIR: Senator Blair writes me, 'Hurlbut telegraphs that the Chilians have captured Calderon and carried him to Chili.' The Senator adds, 'There must be trouble now. Have General Grant do his duty. American influence in America is at an end if Chili can slap our face as flatly as this.'"

And you also say in the same letter, "I shall consult General Grant to-day, and he and I may go to Washington on Thursday." Did you seek to get General Grant to co-operate with you in the way indicated in that letter?

The WITNESS. I did consult with General Grant pursuant to the purpose which I had, and which I mentioned in that letter. I cannot say that I endeavored to get him to come to Washington. I consulted with him as to what had better be done; and I suggested that I should be very glad to have him go to Washington with me, if he thought it best. He replied that he thought it was not necessary for him to go personally; and I think he added that it would be difficult for him to leave at the time. We had what was, properly, a consultation in the premises. I did not urge anything on his attention—any special method.

Mr. BLOUNT. Was not this display of relations to General Grant intended to impress Mr. Hurlbut with the great political backing that you had?

The WITNESS. I did not know that I had made any more display of General Grant's name than of the name of any other gentleman; I certainly had not intended of.

As I stated yesterday, all that I sought to impress Mr. Hurlbut with, by the use of names, was the fact that I was not alone in my judgment as to the important facts at issue here; but that gentlemen whose names would certainly command his respect, and whose names represented all the parties and all the factions, were associated with me in the premises, and were approving the steps that I was taking. That general fact I thought it proper and important to keep before his mind. I never, so far as I am aware, had any special desire to bring any special name to his attention.

Mr. BLOUNT. You speak, in this letter of November 15, 1881, of a protectorate, and you use this language:

"The application will only succeed if actively supported by the now very influential voice of this company, and the deputation should be instructed to present only such an application as this company shall, in advance, entirely approve. Upon this point I will go so far as to say that it is the corner-stone of the whole case."

Was it not your purpose, in writing that, to get General Hurlbut to have a commission sent here to make application for a protectorate—such a commission as only your company should approve?

The WITNESS. I had no purpose in the premises that was not completely defined in that letter. The letter can speak for itself better than any interpretation that I can give of it.

Mr. BLOUNT. Please to answer the question.

The WITNESS. I can only answer it in this way. Whatever purpose I had is defined in the phrasing of the letter itself.

Mr. BLOUNT. As the language itself probably suggests the answer, I will not urge the witness. I simply wanted to give him an opportunity, if any explanation were to be made of it, to make it. (To the witness.) I find a brief of Mr. Scott Lord's on the Cochet claim urging that the consent of the Senate is not a prerequisite to a treaty, and citing a number of cases. I suppose that your object was to influence by that the opinion of Mr. Hurlbut in negotiating with the Peruvian Government?

The WITNESS. It was simply to keep Mr. Hurlbut fully advised of all that we were doing and thinking in the premises, so that he might act with entire intelligence. I never consciously sought to bring any pressure to bear upon him whatever, but to keep him fully informed of the facts.

Mr. BLOUNT. I find a letter from Mr. Blaine to Mr. Hurlbut, dated November 17, 1881, in which the following language is used:

"SIR: Your No. 12, in reference to the Cochet and Landreau claims, indicates a prudent and discreet course on your part. After the instruction in my No. 7, in regard to this subject, had been mailed, I became convinced that there was no need of even the preliminary inquiry, which I suggested in regard to the Cochet claim. There is no just ground whatever on which this government could intervene on behalf of it."

Did Mr. Blaine talk to you in that way at any time in reference to the Cochet claim?

The WITNESS. Never. He never made a suggestion which looked in that direction.

Mr. BLOUNT. Again, he says:

"The statements which you say were made to you by Mr. Jacob R. Shipherd are very extraordinary. It is in the first place extraordinary that he should have written to you at all, for I carefully advised him that ministers of the United States in foreign countries were not permitted to extend their good offices in aid of any claim unless so instructed by the Department of State. I repeatedly told him that any representations on behalf of the claims he was urging must be made at Lima by his own agents."

Is that correct?

The WITNESS. It is only in a very small part correct.

Mr. BLOUNT. How far?

The WITNESS. All that was ever said by Mr. Blaine to me, or in my hearing, of that nature was in the direction of encouraging me and stimulating me to send commissioners at an early day whom Mr. Hurlbut might immediately present to the Peruvian and Chilian authorities. The statement was made two, or perhaps three times, and whenever it was made it was made in this form: "Send down your commissioners, and General Hurlbut will take them by the hand." (I remember that phrase being used once.) "He will see that they have audiences. He will introduce them as reputable American citizens, entitled to the confidence and the courteous treatment of the governments with which you propose to treat. Send down your commissioners, and Mr. Hurlbut will do everything for them that they need. That is his duty."

In that connection I beg to refer to a dispatch from Mr. Blaine to Mr. Hurlbut, dated November 19, 1881, in which he elaborates precisely that statement. It is dispatch No. 374. Mr. Blaine says in that dispatch:

"I presume that you will be asked by the agents or officers of the Peruvian Company of New York to lend your influence as United States minister to promote its interests. It would, of course, present to you the claim of an American organization composed of reputable citizens and entitled to your good offices where they may, with propriety, be extended.

* * * * *

"To extend all proper protection to American citizens, and to secure for them in any interests they may have a respectful hearing before the tribunals of the country to which you are accredited, and generally to aid them with information and advice, are among the imperative and grateful duties of a minister—duties which increase his usefulness and add to his respect, and duties which I have no doubt you will faithfully perform."

Mr. BLOUNT. But, above that, there is a qualification.

The WITNESS. But there are qualifications all the way through. I refer to the paragraph which I have read as simply repeating here the substance of statements which the Secretary made to me; and the statements which he made to me were separated (so far as I recollect) in all cases from the qualifications which are introduced here. That is the reason why I have read those parts only. He said to me, generally and repeatedly, that if we would send commissioners down there they would have every assistance from Mr. Hurlbut.

Mr. BLOUNT. The Secretary says in this dispatch: "Influence of your position must not be used in aid of Crédit Industriel or any other financial or speculating association." And again he says:

"However trustworthy the Crédit Industriel may be, I did not consider it proper for the department to have anything whatever to do with it. It is a foreign corporation, responsible to French law, and must seek its patronage and protection from France. At the same time it is no part of your duty to interfere with its negotiations with the Peruvian Government."

And again he says:

"I recognize several of the singular propositions imputed to me as having been made by Mr. Shipherd, and not in any sense admitted or assented to by me. I told him, in the three or four interviews which he sought with me, that I could see no possible ground on which the United States Government could lend its good offices in aid of the Cochet claim. You will therefore pay no attention whatever to anything Mr. Shipherd may write you in regard to claims against the Government of Peru."

Is that a correct statement—that is, that he told you, in these interviews, that he could see no possible ground on which the government could lend its good offices in aid of your claim?

The WITNESS. The first knowledge that I ever had that the Secretary of State entertained any such views was brought to me by the original letter of December 3. Up to that time the Secretary of State had never said, had never intimated to me, or in my hearing, that he had any serious or ultimate doubt with reference to the Cochet claim. The most that he ever said in that direction was, as I have testified, to suggest possible difficulties, and to defer his judgment on the claim until we should hear from the Peruvian Government. He never proposed to pass upon it. He never proposed to examine it (I mean to me.) He never proposed to refer it to General Hurlbut to examine it or for decision. If he had suggested such a thing, we should have most vigorously protested against it. We never had an idea of referring such a claim to anybody, especially to a minister who was 5,000 miles away, and before whom we could not be heard. No such suggestion was ever made. No suggestion of an adjudication of the merits of the Cochet claim was ever made or hinted at by the Secretary of State in my hearing in any sane moment. The first intimation I had that the Secretary in any sense opposed it was when his original letter of December 3 reached me.

Mr. BLOUNT. Did you inform the Secretary that you were carrying on this extensive correspondence with Mr. Hurlbut?

The WITNESS. As I have stated in my letter to Mr. Boutwell, I think there never was an interview between the Secretary and myself, except the brief one on the cars, when I did not discuss with him, not merely the fact that I was in correspondence with Mr. Hurlbut and Mr. Hurlbut in correspondence with me, but I analyzed the letters and stated the substance of what I had written or expected to write. In my interview of October 13 I presented to the Secretary General Hurlbut's original letter, of which I complained, and we discussed that letter. Neither at that time nor at any other time was the slightest suggestion made on his part that there was anything improper in this correspondence. I discussed it almost as freely with him as I did with Senator Blair—as freely, indeed, as our relations would permit.

Q. Did you have any correspondence with Senator Blair in reference to this claim?—
A. Yes.

Q. The committee would like to have it.—A. I cannot present it. It is strictly private correspondence between client and counsel.

Mr. BLOUNT said that he would bring the matter up before the committee hereafter.

By Mr. RICE:

Q. You have testified in reference to your discussing these letters with Senator Blair. Did you include in that statement the letter which you wrote to Mr. Hurlbut at Belvidere, representing that \$250,000 of stock would be reserved for himself and his friends?—
A. O, yes.

Q. Did Senator Blair see that letter before you sent it?—A. No, sir. He was not retained till long afterwards.

Q. Had you told him of it prior to your interview with the Secretary in July?—A. Yes, I think so. I think I brought it to his attention at an early date. I brought it to the attention, in turn, of every gentleman whom I retained as counsel. It was a letter which I supposed would be at some time or other discussed, and it was, therefore, a letter to which I took pains to call attention and to take opinions upon.

Q. Did any of them express an opinion that there was anything improper in that letter?—A. I have no recollection that any opinion was expressed in regard to it implying that it was deemed to be an improper letter.

Mr. BLOUNT. Was there any suggestion of that kind?

The WITNESS. The suggestion was almost uniformly made that it was a letter capable of two interpretations. Once or twice, or perhaps three times, it was said to me, "Shipherd, that letter may get you into trouble." But there was never any suggestion made that the letter, on its face, impressed the counselor, in the first instance, as an improper letter. It was simply a letter which, being capable of two interpretations, might be so interpreted as to make trouble.

Mr. RICE. In the letter from Camacho to Arizola of August 20, 1881, is the following:

"5. You will again note the special interposition of Providence. Although this great right has lain still so long, nothing of its vitality has been lost. Cochet was solemnly adjudged to be 'the true discoverer,' and thereupon, if not even earlier, he became, in the language of his excellency Mr. Evarts, Secretary of State at Washington last year, and the first lawyer in the United States—'Cochet became immediately the owner in fee absolute of one-third of all the guano in Peru, *known and unknown*; for being the discoverer of its *value* his right was inseparable from the thing wherever found, and that ownership could never be extinguished or limited, save by his own act.'"

In what original paper of Mr. Evarts is that to be found?

The WITNESS. My only knowledge of that is merely hearsay, and the hearsay is to the effect that that was a verbal comment made by Mr. Evarts while Secretary of State upon such portion of the papers in the case as were then laid before him. I have no personal knowledge in the matter.

Mr. RICE. But yet it is in a letter which you consciously forwarded to Peru.

The WITNESS. I forwarded it as I received it. I do not know what the knowledge of the writer may have been. My knowledge, so far as I had any, was entirely confirmatory of that, and I suppose it was credible.

Mr. RICE. You have stated that the property of this company is what was purchased from Gelacio, the natural son of Alexander Cochet.

The WITNESS. Yes, sir.

Mr. RICE. Will you swear that the person who purchased it from Gelacio Cochet paid over \$50 to him for it?

The WITNESS. I should not like to answer such a question as that, if for no other reason than because it would be the first of an indefinite series of questions.

Mr. RICE. I merely asked you whether you were ready on your oath to state that over \$50 was paid to Gelacio Cochet for this claim which you have made the basis of this great national enterprise.

The WITNESS. I beg to be excused from making any statement in the premises.

By Mr. BELMONT:

Q. You wrote to President Garfield in April, 1881, in behalf of certain clients touching a certain claim, or certain claims, against Peru. Who were those clients?—A. I decline to state.

Q. Were they the Peruvian Company?—A. I beg to be excused from answering any questions in that line.

Q. Was the Peruvian Company in existence at that time?—A. It was not.

Q. Is not that an answer to a question in that line?—A. I understand it to be in a parallel line.

Q. What are the names of your clients?—A. I decline to state.

Q. Do you decline to answer under advice of counsel?—A. Yes, sir.

Q. Had you not better consider whether such advice as you are following is in your own interest, or in the interest of others?—A. I have considered that question.

Q. What has been the result of your consideration?—A. I have been advised thus, that the purpose of the present inquiry does not require the disclosure of the transactions of the Peruvian Company, except such transactions as were directly or mediately with the United States Government; and, with all respect for the committee, I simply desire to save those purely personal rights in the premises that would only be sacrificed (as I think and I am advised) by exposure in this investigation, going as it does not merely to the committee, not merely to the House, but immediately to the whole country.

Mr. BELMONT. I asked the question in reference to the Peruvian Company which (you say) did not exist at the time you first wrote to President Garfield, because it seems that, in the interval until the organization of the company in October, the association of persons whom you represented, and whom you now profess to represent, gave a certain direction to the policy of the government in relation to South American matters, and that during the disability of the President. You have stated in regard to your interview with Mr. Boutwell as follows: "The very important query arose whether the Secretary of State would consider himself sufficiently informed to be able to proceed without consulting the President. That ground was very carefully gone over. The only decision we could reach"—. That means you and Mr. Boutwell, does it not?

The WITNESS. I suppose so; that is my recollection.

Q. Did Mr. Boutwell say that this question, as to whether the Secretary of State would consider himself able to act without consulting the President must be left to the Secretary himself to decide?—A. My recollection as to the result of the conference on that question is general, and is simply to the effect that it was agreed between us (each being of the same opinion) that that must be left to the Secretary. Whether the suggestion was made by me and concurred in by Mr. Boutwell, or whether it was made by Mr. Boutwell and concurred in by me, I do not recollect. My recollection is general—that we were agreed upon that point. It was a question with which we could not properly concern ourselves—a question which must be left to the Secretary himself to dispose of.

Q. You have refused to give the names of your clients. Will you state whether those clients (whoever they were) suffered an injury from the Peruvian Government, for which they sought redress through our own government? Or had they purchased, or agreed to purchase, a certain claim or claims against the Peruvian Government, which they thought equitable, but which the Peruvian Government disputed?—A. I have already testified as to that two or three times.

Q. I ask you the question once more.—A. I will answer it. I am only premising that I repeat that the understanding of my clients was that they had purchased a title to property, a part of which—

Mr. BELMONT. (Interrupting.) Did they, or did they not, receive an injury from the Peruvian Government?

The WITNESS. I am coming to that point.

Mr. BELMONT. I ask the question now.

The WITNESS. I must answer the question in my own way.

Mr. BELMONT. But I must ask the questions in my own way.

The WITNESS. Yes; and I must answer them in my own way or I cannot answer them at all.

Mr. BELMONT. Did your clients receive an injury from the Peruvian Government, or did they not?

The WITNESS. I cannot answer that question "yes" or "no." If I can be permitted to answer the question, I can answer it completely.

Mr. ORTH. You can answer it yes, or no, with an explanation.

The WITNESS. I can put it in that form provided I am guaranteed the explanation; but I will not undertake to commit myself to answer "yes" or "no" to that question with the chance of being cut off from an explanation.

Mr. KASSON. You have a perfect right to complete your answer to any question put to you.

The WITNESS. I so understand. My clients did not understand that they had suffered an injury from the Peruvian Government.

Mr. BELMONT. That is all.

The WITNESS. Now I propose to complete my answer to the question. They did consider that they had purchased a title to property—

Mr. BELMONT. (Interrupting.) When did they purchase it?

The WITNESS. Oh, I must be allowed to complete my answer.

Mr. KASSON. Let the witness complete his answer.

Mr. BELMONT. For the time being, I am carrying on the examination.

Mr. KASSON. But the witness appeals to the committee as to his right, and it is decided that he shall have the right to complete his answer. I submit it to the chair.

Mr. BELMONT. Is that the understanding?

Mr. RICE. (In the chair.) That is the rule of law, that the witness may add to his answer, after he has made it, any explanation.

Mr. BELMONT. The trouble which I find is that the witness may extend his answer over an indefinite space. The question which I ask has a particular object.

The ACTING CHAIRMAN. The committee will not be entitled to the witness's answer until the witness has finished his explanation. The explanation must appear, or the answer must be stricken from the minutes.

Mr. DEUSTER. Are we acting under the rules of law?

The ACTING CHAIRMAN. I do not see that that is a rule which we can very well avoid.

Mr. DEUSTER. I would be willing, when Mr. Belmont has the witness in charge, that he should conduct the examination.

The ACTING CHAIRMAN. But the answer was given.

Mr. BELMONT. I do not think it necessary to enter into a discussion of this matter. I certainly shall not object to the witness giving an explanation, but I want the answer first.

Mr. WILLIAMS. He has given a qualified answer. If you receive his explanation you will be clearly entitled to put any question in regard to that explanation which you may desire.

Mr. BELMONT. The question now is, whether the witness has commenced his explanation?

Mr. WILLIAMS. He says he has. He consented to make a categorical answer on the condition that he would have an opportunity to make his explanation.

Mr. BELMONT. What is the categorical answer?

The reporter was directed to read the answer, and he did so.

Mr. BELMONT. What is the answer of the witness as to whether his client had received any injury from the Peruvian Government?

The WITNESS. I await the pleasure of the committee, appealing to the committee for my right.

Mr. KASSON. I move that the witness complete his answer to the question.

The room was cleared for consultation, and, after the door was reopened, the examination of the witness was continued as follows:

Mr. BELMONT. (To the witness.) You may go on to state what you mean by saying that your clients did not understand that they had received an injury from the Peruvian Government.

The WITNESS. I should like permission, if I say anything, to answer the original question of the examiner, to complete the answer which I have begun.

The question was repeated to the witness by the stenographer.

The WITNESS. In answer to that question, I have to say that I understood my clients to hold that they had purchased a title to property, some of which they believed to be still in its original place of deposit, and some of which they expected to find had been removed by the authority of the Peruvian Government. They expected to assert their title, and, first of all, to ascertain the position of the Peruvian Government towards that assertion of title. They did not understand that, up to that time, they had necessarily been injured by the Peruvian Government. They did understand that it might turn out that the Peruvian Government had injured them by carrying away part of their property, for which it might not pay. If the examiner will indulge me, he will see the reason why I was not prepared to answer unqualifiedly with a "yes" or "no."

Mr. BELMONT. No; I do not see it.

The WITNESS. I have not completed my answer. They did not understand that they had purchased a title which the Peruvian Government disputed. They did not understand that the Peruvian Government had ever been called upon to express an opinion in reference to the title which they now assert and then asserted. They, therefore, were in this position, that while they did not understand that they had been intelligently and intentionally injured by the Peruvian Government, they did not understand that any justice had been denied them in such a sense that they had a grievance which they had a right to lay before the United States Government. They did not understand that. They did understand that the situation was such that it might ultimate in justice being denied; and in that state of facts they drew near to the American Government in order that, being in such relations to it, if justice should be denied them, as they feared it might, they might be ready at once to turn to the government and appeal to it for help.

Mr. BELMONT. Then at that time justice had not been denied to them?

The WITNESS. I have stated the case as clearly as I can.

Mr. BELMONT. Can you answer that question?

The WITNESS. I cannot answer it any clearer than I have answered it.

Mr. BELMONT. Will you answer that question?

The WITNESS. I do not see how I can properly answer it "yes" or "no." I have already answered it fairly.

Mr. BELMONT. You have said that it might be found by your clients that the Peruvian Government would do them an injury in denying them justice, but will you say whether or not your clients had at that time been denied justice?

The WITNESS. I cannot say it any more clearly than I have done.

Mr. BELMONT. I think you can.

The WITNESS. I do not know how to do so.

Mr. BELMONT. You have said that there was no injury done to your clients on account of which they could apply for the good offices of their own government?

The WITNESS. I have not said that. I have proceeded to state what I understood the views of my clients to be. I am not prepared to state absolutely, whether or not the Peruvian Government had injured them. That is a question, the answer to which is not within my knowledge. It is a question of law and of fact.

Mr. BELMONT. You say that you have consulted with counsel on all these questions?

The WITNESS. I did not know that I had said that.

Mr. BELMONT. Was there any injury done to your clients for which they would be entitled to demand redress from the Peruvian Government?

The WITNESS. I cannot add anything to the answer I have given.

Mr. BELMONT. Then you refuse to answer that question?

The WITNESS. I answer that it is impossible for me to give any information in addition to what I have already stated on that point.

Mr. BELMONT. You refuse to answer my question as to whether your clients had been done an injury by the Peruvian Government which would justify them in applying for redress from the Peruvian Government itself?

The WITNESS. I answer that question by saying that the answer is not within the range of my knowledge.

Mr. BELMONT. You refuse to answer the question?

The WITNESS. I do not refuse to answer the question.

Mr. BELMONT. Why not answer it?

The WITNESS. I object, with all respect, to such suggestions being forced into my mouth. I have as many rights here as the examiner, and I am prepared to defend them.

Mr. BELMONT. You will not be denied any rights by this committee. You are not called here except as a witness. The committee has no accusation to bring against you. You are called here as other witnesses will be called to testify to a very important matter, and you are simply asked whether or not you will answer certain questions.

The WITNESS. I ask the committee, now, to excuse me until to-morrow morning.

The committee thereupon adjourned until to-morrow morning.

WASHINGTON, April 13, 1882.

The committee met at 10.30 a. m.

JACOB R. SHIPHERD recalled and further examined.

Mr. SHIPHERD. If the Chairman please, I would like to inquire whether the committee has made any arrangement for revising the testimony as far as taken before the committee?

The CHAIRMAN. That matter has not been brought up definitely yet.

Mr. SHIPHERD. Then I would like to submit this as an individual request—that my own testimony be revised by the reporter for the Associated Press, so as to conform to his notes.

The CHAIRMAN. That his report may be used for the correction of any inaccuracies?

Mr. SHIPHERD. Yes, sir; I would like to have him do it, because he has his original notes.

The CHAIRMAN. What is the pleasure of the committee on this proposition?

Mr. BLOUNT. I would not like to say that the Associated Press reporter might correct this testimony. Wherever there are any discrepancies Mr. Shipherd can call attention to them, and the Associated Press reporter's notes might aid us in that matter. I have no objection to that.

Mr. SHIPHERD. It would be a week's work for me to undertake to go through all that.

Mr. BLOUNT. No matter how much work there might be, I, for one, would not consent that any person should revise this testimony without reference to the approval of the committee.

The CHAIRMAN. I think we had better waive that matter for the present.

Mr. SHIPHERD. I simply submit it as a request. It is absolutely essential to me that whatever is reported to Congress as my testimony shall be my testimony. I should be willing to abide by the notes of the Associated Press reporter.

Mr. BLOUNT. I want to be fair, but at the same time I think there is some fairness towards the committee to be considered, and that we ought to have control of the matter.

The CHAIRMAN. We will consider it at our next meeting.

Mr. BLOUNT. I do not mean to say that I do not appreciate the desire of the witness to be reported correctly, but I do not think the committee can afford to take the position of allowing the Associated Press agent to make corrections in the testimony without the revision of the committee in connection with it.

By Mr. BELMONT:

Q. You have refused to give to the committee the required information about the Peruvian Company. I shall not now repeat my questions upon this point, but I shall hold them in reserve. You, or those who have advised you to pursue the course you are now following, appear to have mistaken the scope and purpose of this investigation. There are other considerations than the mere pecuniary relations of individuals to the subject of the inquiry. The investigation was ordered not only because certain papers are now missing from the files of the Department of State, or because a questionable contract, apparently of a political nature and depending for its performance on our policy in South America, was signed in Paris last August, but also because official papers furnished the House have disclosed the fact that the Peruvian Company, which you represent, was a subject of diplomatic correspondence, and it has appeared that its purposes were carried out in a dispatch of August 4, addressed by the Secretary of State to our minister in Peru, immediately after your interview with the Secretary of July 25. This dispatch was afterwards shown you by the Secretary himself at the State Department, that you might be assured of its contents, and the dispatch itself stated that "no treaty of peace between Chili and Peru shall be made unless there is a recognition of Landreau's claim as a prior lien upon the territory which Peru might be required to cede to Chili."

These are not questions of private interests, but they relate to the foreign policy of the government. The House has assumed jurisdiction to inquire about the Peruvian Company, and I shall ask you for all the information you possess when I return to this branch of inquiry. I would like you to repeat as briefly as possible, and as carefully as you can, what you said to the Secretary of State in the interview of July 25th in regard to the instructions you desired should be sent our minister in Peru. I intend to have read the Secretary's dispatch of the 4th of August, and I wish to know how far it carried out the purposes of the Peruvian Company as described to him in the presence of Senator Blair, then your counsel. You will remember that Mr. Blair was a witness to that transaction and might be called upon to testify as to what occurred between you and the Secretary. Now I will ask you to repeat that conversation upon the topic of the dispatch.

Mr. SHIPHERD. I would like to know whether it is the pleasure of the committee that I am to go thus deliberately twice, or an indefinite number of times, over the same ground?

Mr. BELMONT. I have simply asked you to state the facts as briefly as you can in order that it might be shown whether or not your suggestions were carried out in the dispatch.

Mr. SHIPHERD. I appeal from the question to the committee, on the ground that it has already been fully answered.

The CHAIRMAN. I suppose the right of cross-examination reverts to each member of

the committee, under our rule, and it is a matter discretionary with the examiner whether he chooses to go over the ground again or not.

Mr. BLOUNT. I cannot understand the matter in any other way, except to consider it as a disagreeable criticism of a member of this committee by a witness. That member is at present charged with conducting this examination before the committee, and I take it that the committee are capable of supervising it. If he is repeating questions to their dissatisfaction, it is a matter for the committee to decide upon.

The CHAIRMAN. Is it the opinion of the committee that the witness shall answer the question? [After a pause.] It seems to be the opinion of the committee that the witness should answer the question.

A. The substance of my suggestion to the Secretary, in answer to his question as to what I wanted him to do was, that I wanted notice given by the representatives of the United States that such representations had been made at the State Department as disposed the United States to notify both Chili and Peru—to call the attention of both Chili and Peru to the Landrean claim and the assertion of Cochet's title, and to suggest or direct that no settlement ought to be made, in the judgment of the United States, between those two parties, without reference to the rights, actual or possible, of the parties who had brought this claim and its title to the notice of the United States Government.

Q. You were not satisfied, I believe, with the way General Hurlbut carried out these suggestions, and you have testified that you again came to Washington with your counsel, Senator Blair, this time to ask the Secretary of State for the instructions which had been sent, and that the Secretary took you to the State Department and showed you the dispatch, in the interview of October 14. Will you state what assurance the Secretary of State gave you that your suggestions had been carried out?

Mr. LORD. Is it convenient for you to state, Mr. Belmont, what page of the witness's testimony you are calling attention to now?

Mr. BELMONT. I am just taking the general testimony that has been given.

The WITNESS. The assurances, if any, on that point, which the Secretary gave, consisted in a disclosure to me of the text of the dispatch which he had sent, accompanied with a pointed and brief oral reminder that I had only asked that there should, in effect, be some instructions given that would result in a notice and a stay. He made some remark that called my attention to it and emphasized to me the fact that I would see in the dispatch that he had covered, in effect, all the ground I asked him to cover.

Q. Did you see the ground that had been covered?—A. I saw that the ground had been covered, as I thought, in effect. That is, the principal object that I had was to delay the conclusion of an actual treaty between the two countries, or committals, and I thought that the notice, although it was not given quite as favorably and clearly as I supposed from Senator Blair's account it had been given, yet I was satisfied in my own mind that that notice would result in actual delay. That was then all I was looking for.

Q. Did the Secretary assure you that the intention of the dispatch was to carry out your purposes?—A. I do not think he stated that. I understood that to be very broadly implied by the tone and manner of his remark, which was a sort of reminder: "Why here, Shipherd, you remember you only asked for so much; now, you see what I wrote," I took it as an implication rather than as a statement.

Q. Did he not say when he invited you to go to the State Department that you would find the dispatch such as he had told you would be sent?—A. No, sir. Prior to my going to the State Department my recollection is that he merely said in a very concise way, "Why, certainly; you meet me at the department to-morrow at 12 o'clock and I will show you the text, and you will see for yourself"—merely that suggestion, but no suggestion as to what I would find in the dispatch,

Q. Mr. Blair afterwards wrote you: "Everything has been just as you have wanted it all the time"?—A. Yes, sir; and as I have testified, that remark he repeated frequently to me in an emphatic way, or a remark equivalent to that.

Q. Did you repeat to the Senator your conversation with Secretary Blaine at this interview of October 14?—A. I doubt whether I repeated the conversation. I remember that when we next met he somewhat eagerly demanded what I found, seeking to discover the impression upon my mind, and I disclosed that impression to him.

Q. Will you state that conversation?—A. I could not.

Q. What I want to know is whether or not Senator Blair and yourself, as client and counsel, had reason to believe that the dispatch of August 4 was in accordance with your conversation at the interview of July 25?—A. Whether we had reason to believe it or not is a question upon which each man would pass independent judgment. I can only say that I thought I had reason to be satisfied, and that Senator Blair very strongly believed that he had reason to be satisfied in his opinion. There is no question as to the impression on both our minds at the time.

Q. What other dispatches did the Secretary show you at that interview?—A. Only the two that I have stated—the one of June 15 and the other of August 4. But I understood him distinctly to say, or to imply at least, that those were the only mail

dispatches that he had sent. I understood his intention to be to disclose to me all that had been sent.

Q. You have stated in your letter of August 19, that "by arrangement with the attorneys of the Landreau claim we treat the two interests for present diplomatic purposes as one to a certain extent. The owners of the Cochet interest will, at the proper time, absorb the junior lien so as to protect the equities of the interests involved." When was this arrangement made?—A. My recollection is that it was in July, somewhere approximately in the early part or middle of July. There was a final conference with two parties who claimed to have an interest, I think, almost immediately preceding the 25th of July, in which I brought to their attention the fact that I was about to confer with Secretary Blaine, and asking their wishes in the matter, stated what overtures had been made to me by those who claimed to represent the whole interest, I still deferring to the claims of these parties of the merits of which I knew nothing, and the reply made was that they would be very glad so far as their interests were concerned if I would consider them parties to the arrangement.

Q. Was it understood by the Secretary that you also represented the Landreau interest?—A. I stated to him substantially the facts in detail as to my representations of the Landreau interest, telling him I was merely requested or authorized in this negotiation to ask him to treat the two claims as one for present diplomatic purposes.

Mr. BELMONT. I should like to have the dispatch of August 4 made a part of the testimony.

The dispatch referred to is as follows:

"No. 346.

"Mr. Blaine to Mr. Hurlbut.

"No. 7.]

DEPARTMENT OF STATE,
"Washington, August 4, 1881.

"SIR: As you are aware, several communications have been recently addressed to this department in reference to certain alleged claims of citizens of the United States upon the Government of Peru, with most urgent request for the good offices of the United States Government in their behalf. While I cannot anticipate that in the present distressed and unsettled condition of that country our representations, however urgent, will receive prompt or satisfactory attention, I deem it best, in view of possible contingencies, to furnish you with general instructions. The two claims for which special consideration and active intervention have been asked are those known as the Cochet claim and the Landreau claim. In reference to the Cochet claim there has been no information laid before the department of a sufficiently definite character to warrant a specific instruction, and in the absence of the requisite data here you will be left to take such steps as may seem expedient on investigating the origin and character of the claim.

"The primal point at issue is whether any American citizen or association of citizens has acquired an interest in the claim in a manner entitling him or them to the good offices of this government in making any representation to Peru. As the American holders of the claim or their attorneys will be on the ground, you will no doubt be placed in possession of all the facts, but you will take no step committing your government to the use of its good offices without first reporting in full to the department for well-considered and definite instruction. In regard to the Landreau claim, I see no reason to differ from the conclusion to which my predecessors seem to have arrived. John C. Landreau was an American citizen, apparently entitled under a lawful contract to reasonable compensation for important services to the Peruvian Government. In conformity with the established practice of our government, while you cannot in such case make an official demand for the settlement of this claim, you will employ your good offices to procure its prompt and just consideration. You will have observed that in the contract made by the Peruvian Government with Landreau and his brother it is expressly stipulated that any questions arising under its provisions should be submitted to the judicial tribunal of Peru, and that in no case shall diplomatic intervention be asked. You will also notice that the supreme court of Peru, sustaining a decision of the court below, has ruled that it had no jurisdiction of this contract, thus leaving Landreau in a position in which he can neither appeal to his own government nor obtain a judgment from the tribunals to which, by the contract, he was authorized to apply.

"While this government will not, as at present informed, undertake to construe the contract or to decide upon the extent of the compensation due Landreau, you are instructed to call the attention of the Peruvian Government to this injustice, and say that the Government of the United States will expect some adequate and proper means to be provided by which Landreau can obtain a judicial decision upon his rights. If the constitution of the Peruvian courts or the interpretation of the law by Peruvian judges deprives Landreau of the justice which the contract itself guaranteed him, then,

in the opinion of this government, Peru is bound in duty and in honor to do one of three things, viz: Supply an impartial tribunal, extend the jurisdiction of the present courts, or submit the case of Landreau to arbitration. I desire also to call your attention to the fact that in the anticipated treaty which is to adjust the relations of Chili and Peru, the latter may possibly be compelled to submit to the loss of territory.

"If the territory to be surrendered should include the guano deposits which were discovered by Landreau, and for the discovery of which Peru contracted to pay him a royalty upon the tonnage removed, then the Peruvian Government should in the treaty stipulate with Chili for the preservation and payment to Landreau of the amount due under his contract. If transfer be made to Chili it should be understood that this claim of an American citizen, if fairly adjudicated in his favor, shall be treated as a proper lien on the property to which it attaches, and that Chili accepts the cession with that condition annexed. As it may be presumed that you will be fully informed as to the progress of the negotiations between Chili and Peru for a treaty of peace, you will make such effort as you judiciously can to secure for Landreau a fair settlement of his claim. You will take special care to notify both the Chilean and Peruvian authorities of the character and status of the claim in order that no definite treaty of peace shall be made in disregard of the rights which Landreau may be found to possess.

"I am, &c.,

"JAMES G. BLAINE."

Q. At this interview of October 14 there was another topic of conversation. I believe you have already testified to that, although you have not stated what was said in regard to the letter of June 2?—A. Yes, sir; at the interview of October 13 (I should say probably it was) a further reference was made to my letter of June 2, and a discussion of that letter and its terms was entered upon as contrasted with the probable overtures that had been made by the *Crédit Industriel*. It was in that connection the matter came up.

Q. Overtures to whom?—A. Overtures to General Hurlbut, and I think that Senator Blair made some such remark as this—

Q. Senator Blair was present at this interview also?—A. Yes, sir; he was present.

The CHAIRMAN. This is a portion of your interview about which you testify now for the first time.

The WITNESS. I have alluded to it before, but I am now entering into the detail. I think Senator Blair made some such remark as this: "Why, Hurlbut would rather have \$10,000 in hand than \$250,000 of your stock if he had to pay for it." Some suggestion of that kind was made as contrasting the two offers.

By Mr. BELMONT:

Q. The only thing I want to know is this: whether the Secretary was for the second time made aware of the letter which you had written to General Hurlbut?—A. This discussion took place in the presence of the Secretary.

Q. This was the second time that the letter was a subject of conversation between you and the Secretary?—A. Yes, sir.

Q. So that the Secretary was fully aware that you had written that letter to General Hurlbut?—A. I do not want to say what he was aware of; I can only repeat what was said in his presence.

Q. And said in the presence of Senator Blair each time?—A. Yes.

The CHAIRMAN. Would it not be desirable just here to get exactly what was said?

Mr. LORD. You are not inquiring about the interview of the 25th and the 26th, but about a subsequent interview.

Mr. BELMONT. Yes.

The CHAIRMAN. The witness has commenced to give in detail that conversation.

The WITNESS. Some allusion of this kind or suggestion of this kind having been made—a suggestion of \$10,000 in cash as something that might have been offered by the *Crédit Industriel* in contrast to the offer to sell \$250,000 of stock—the suggestion led to a repetition by me of the text of the letter. I think that the Secretary called for it, and said, "Shipherd, just what was it that you wrote to General Hurlbut?" My recollection is distinctly that I repeated the letter verbatim, the Secretary following very carefully, and he says: "Yes, so far as it may be perfectly proper." "Well," he says, "that is rather a sticker." I said, "It was meant to be a sticker," and at the close he says, "Well, Steve wouldn't consider that very attractive; you will never catch Steve that way," or some remark of that kind, indicating, apparently, the Secretary's impression as to the letter, and as to its probable effect upon General Hurlbut's mind. That is about the substance of it, I think, as fully as I can give it at the moment.

By Mr. BELMONT:

Q. You have testified that when you were shown the dispatch of June 15, the Secretary said to you that "this makes room for you."—A. He made some remark of that kind. I wish to be as precise as possible. I do not know but what it was I who first made

a remark upon it, asking him whether that did not make room for me, and in response to that perhaps he said "Yes." The recollection is clear in my mind that he said something that distinctly assured me that that paragraph was intended to make room for us, but it may be (I do not think it was, I think he volunteered it) that what he said was in response to an inquiry of mine.

Mr. BLOUNT. What is that paragraph.

Mr. BELMONT. Do you ask what the paragraph is?

Mr. BLOUNT. Yes; I don't recollect the language of it, and I therefore do not appreciate fully the question.

Mr. BELMONT. It is the paragraph of these instructions which says that "the United States will aid with their good offices the Peruvian Government in making any arrangement at home or abroad which will furnish an indemnity to be paid to Chili, or supply a guarantee to be required by Chili."

The WITNESS. I remember that I left Washington with a very deep impression upon my mind, after that interview at the State Department, that it must be that Senator Blair's assurance was right; that although the phraseology of the two dispatches was narrow and might be considered meager, yet, under all the circumstances and under the intimations that the Secretary had made (and it is due to him to say that his language at all times was very reserved and was eminently worthy of his high office; he did not enter into explicit assurances, but he made statements and suggestions and intimations) it was impossible for me on careful review to construe it otherwise than as a most profound assurance that his plan had distinctly provided a full place for our scheme, and that he had intended to provide it in both the dispatches of June 15th and August 4th.

By Mr. BELMONT:

Q. In the dispatch of June 15th, Peru is to be encouraged by the United States to make this arrangement either singly or with the assistance of friendly powers. Did you understand the Secretary to mean by the phrase, "friendly powers," any nations like France or England, to which the phrase, when used by diplomatists and governments, always applies, or that it meant any enterprising company like the French Crédit Industriel which was then in existence and was a large creditor of Peru, or the Peruvian Company, which you were then engaged in founding with the intent of making it a creditor of Peru?—A. No comment was ever made in my hearing by anybody on that part of the dispatch, and I have no recollection that it ever attracted my attention specially.

Q. Are you aware that the programme of a possible settlement between Peru and Chili, outlined for General Hurlbut by Secretary Blaine in these instructions of June 15, and left to General Hurlbut to be adjusted in his discretion, agreed in its essential features with that submitted by the agents of the French Crédit Industriel to Mr. Evarts and by him recommended to Mr. Christiancy February 17, 1881?—A. The only understanding that I ever had in regard to the possible incursion of the Crédit Industriel and its scheme in any programme approved by Secretary Blaine was conveyed to me by the Secretary himself in his own allusions to the matter, which were very full in the first interview and were alluded to in subsequent interviews, and were always to the effect that under no circumstances whatever would he have rendered the slightest aid or assistance to the Crédit Industriel.

Q. Then it does not appear probable that Mr. Blaine, at the time he issued these instructions of June 15, in which "friendly powers" are alluded to, had in mind the Crédit Industriel, which had been recommended by his predecessor, or the Peruvian Company, which you had not then founded?—A. Nothing within my knowledge, at the time that dispatch was read to me, would have led me to suppose—certainly nothing did lead me to suppose—that the reference to friendly powers was intended to include any reference to either of these corporations *in esse* or *posse*. On the other hand, I did understand that to refer exclusively to governments. I should not have known how to construe the word "power" in a diplomatic dispatch, so as to make it refer to a corporation.

Q. When was your first interview with General Grant?—A. My impression is that it was some time in September. Without reference to data I could not fix the date more exactly than that.

Q. Did you not testify that General Grant spoke favorably of action on the part of our government in support of these claims, and that he mentioned similar cases as having occurred during his administration? Did he speak of the case of Landreau?—

A. I do not at this moment recall the details of my testimony, but my impression is, in general terms, that I have so stated; at any rate, such was the fact.

Q. I ask you whether he spoke of the case of Landreau?

The WITNESS. Do you ask for the fact? I thought there were two or three subdivisions of the question, and I was undertaking to answer the whole. I will answer the last subdivision if that is fixed upon. He referred to the case of Landreau as one of which he had a dim recollection as having been before Congress, and, to some ex-

tent, before the Executive during his administration. He did not enlarge upon the merits, and he did not at any time speak with decision with regard to the merits of the Cochet claim, as though he had examined it or professed to have an opinion as to the final merits.

Q. What did he say of the Landreau claim?—A. He spoke generally in regard to both claims, and made no distinction, I think, between the two claims; he stated generally something like this: "If you have an honest claim against the Government of Peru there is no question as to what the Executive of the United States ought to do for you, and there is no question as to your right to demand that it shall do such and such things." And then he went on to discuss, as I have said, cases that occurred during his own administration.

Q. Did you not know that the claimant, J. C. Landreau, was appointed consul to Santiago de Cuba during President Grant's administration?—A. I have so heard. I have never taken steps to verify the statement. I have heard it and have assumed that it might be so.

Q. Do you not know that he is now consul at that place?—A. I have been so told. Indeed, I think Mr. Blaine referred to it. I think the first information I had upon that point came from Mr. Blaine.

Q. You say that General Grant stated that the government had a right to do so and so. Will you state more particularly what he said?

Mr. BLOUNT. The witness stated, I think, that General Grant said they had a right to demand that it do so and so.

Mr. BELMONT. Yes, that the government had a right to demand it.

Mr. BLOUNT. No, that Mr. Shipherd had a right to demand it of the government.

Mr. BELMONT (to the witness). You say that General Grant stated to you that a citizen owning such a claim had the right to demand certain things from the Government of Peru. Will you state more particularly what position General Grant took in that matter?—A. My recollection is that the General's suggestions pivoted themselves on an emphasis to the general effect that the citizen had the right to demand that the government, as a government, should right his wrongs when he had a grievance against another government, because he himself was helpless to enforce his right against that other government. I think he spoke particularly of that as the fundamental principle and enlarged somewhat upon it, saying perhaps, in about this phraseology: "Now, an individual or a corporation cannot undertake to compel Peru to admit it to its property, and it is because of this helplessness of the citizen that the right of the citizen against the government exists to demand that his government, being able to enforce his rights, shall step in in his behalf." I think he went along that general line of argument, and confined himself substantially to that as the general principle; that there existed the right, and the reason of it, on the one side, and the duty on the part of the government on the other side.

Q. In your letter to General Hurlbut of October 27th, you say, "The most radical suggestions of policy as yet suggested have the hearty autographic approval of General Grant, who is now one of us." Will you produce that letter or autographic approval?—A. I have already suggested that I would do so, and I repeat the assurance.

Q. Where is it?—A. It is in New York.

Mr. BLOUNT. Can you have that letter sent here without going to New York? Can you send for it?—A. I doubt whether I could, because I am not quite sure where it is filed. I have rather large files of papers, and doubt whether my assistants would be able to find it.

Mr. BELMONT. You would have to go to New York yourself in order to get that document?—A. Yes, sir; and there is some other correspondence that I shall certainly have to go there for, and I expected to get it all at one trip.

Q. Do you remember anything of the contents of that letter?—A. Oh! it was not a letter; it was an indorsement upon a draft for a cable dispatch. I have a general recollection of the contents.

Q. Will you state it?—A. If the examiner will indulge me I shall have to state it somewhat at a venture, and I suppose that a good many people will consider it of some importance; I have no doubt General Grant will, and if I should misstate it now and it should go before the public, he might think I had unnecessarily botched the thing, and I want to give it exactly as it is. If it were less important I should have less hesitation about the matter.

Q. Among the persons interested in your enterprise you included, did you not, some gentlemen believed by you to be close personal friends of General Grant?

The WITNESS. Friends of General Grant?

Mr. BELMONT. Yes; you have so stated in your letter.

The WITNESS. I did not know that I had stated that.

Q. Was or was not that the fact, that you included in your enterprise gentlemen believed by you to be friends of General Grant? It is stated in the letter which you saw, and which was sent by you to General Hurlbut, "I may say further concerning these gentlemen, whose identity is known to me in detail, that they include the nearest personal

and political friends of the Executive, and not only of the present Executive, but of the Vice-President as well, who will succeed to the Presidency in case of President Garfield's death." And you have stated in your letter of November 26, to General Hurlbut, "I was in Washington again last week, and had a full talk with the President, at General Grant's suggestion and upon his introduction." Was that a letter of introduction?—A. Yes, sir.

Q. Will you produce that letter or a copy of it?—A. That was delivered to the President.

Q. You took no copy of it?—A. I think I have a copy of it.

Q. Will you produce that copy?—A. I have no personal objections whatever to doing it, but I query a little whether it is in the direct line of this investigation.

Q. But I think it would be useful.—A. The letter was addressed to the President and delivered to him. If I have a copy of it, it is scarcely properly under my control; it was not a letter addressed to me.

By Mr. RICE. Was it in General Grant's handwriting?

The WITNESS. Yes, sir; it is autographic throughout. I have not the slightest personal objection, but I doubt a little whether I ought to meddle in that way.

Mr. BELMONT. I think, Mr. Chairman, that we should require that letter.

The CHAIRMAN. It is in your discretion whether you will demand it or not.

Mr. BELMONT. I think I would like to have that letter.

Mr. BLOUNT. Is it here?

The WITNESS. No, sir.

Mr. BLOUNT. Suppose we leave that with other matters to be decided hereafter.

The WITNESS. If the committee will, at the proper time, furnish me with a memorandum of such papers as they wish, I will furnish them.

By Mr. BELMONT:

Q. Well, we will put that letter down on the list. Will you answer the question as to the gentlemen you had in mind at the time you made that statement? I asked you just now in regard to those letters which you have written, in which you say that certain gentlemen were interested in your enterprise.—A. The first letter I have no responsibility for whatever.

Q. You sent that letter?—A. Oh! I forwarded the letter.

Q. You saw its contents?—A. Certainly.

Q. Did you suggest its contents to the writer?—A. The tenor of the letter was discussed between us, more or less.

Q. Did he obtain his information from you?—A. A part of it.

Q. Did he obtain that part of it in which it is stated that the gentlemen interested in your enterprise are friends of the Executive and of the Vice-President?—A. Well, he is a person who is probably as well acquainted with the relations of the parties—

Q. I ask did he obtain that information from you?—A. I am answering the question as well as I can. He was a person much better qualified than I to judge of the relations of individuals to the Executive, and he obtained from me the names of certain individuals, and he obtained from other sources the names of other individuals, and he made his own phrasing of it. That is all I know about it, and all the responsibility I have for it.

Q. Were these gentlemen friends of the Executive or friends of General Grant?—A. Well, I do not see what foundation is laid for the putting of that question to me. If the writer of that letter were here he might well ask—

Q. I ask you whether these gentlemen interested in your enterprise were friends of the Executive or friends of General Grant?—A. I can only give my opinion.

Q. Well, I want your opinion upon that subject.—A. My opinion is that at that time there were gentlemen interested with us who were intimate friends of President Garfield's administration, and who were intimate friends of President Arthur. That is my opinion; I so understood it.

Q. Who were those gentlemen?—A. Oh! that I could not undertake to tell.

Q. Were they stockholders in the Peruvian Company?—A. Some of them were.

Q. Will you produce a list of the stockholders in the Peruvian Company?—A. No, sir; under no circumstances.

Q. Was Senator Blair aware that you were supported by these gentlemen when he introduced you to Mr. Blaine?—A. I think that at the time of the introduction to Secretary Blaine, Senator Blair's information as to the parties associated with me was almost nominal. Our first conference—the only conference we had prior to my coming to Washington—lasted from four to five hours, but my recollection is that during that time substantially nothing whatever was said as to the personnel of the parties interested. The whole of the time was occupied, as I remember, with a discussion of the facts and the outlining of the scheme.

Q. Was the relation you held to Mr. Blaine then based on his estimate of the importance of the interests you represented or on his personal confidence in you? You

say that Senator Blair at that time did not know who the gentlemen were whom you represented. I ask you whether your relation with Mr. Blaine, which was brought about by the introduction from Senator Blair, was based on his estimate of the importance of the interests you represented, or on his personal confidence in you?—A. I did not understand at that time that Secretary Blaine concerned himself with anything but the merits of the assertions we made. My recollection is, that during our two interviews of July 25 and 26, he never asked me a question in regard to the personnel of the company; that, as in the case of the discussion with Senator Blair, the time was wholly occupied in discussing the claims asserted and the scheme proposed.

Q. Was Senator Blair aware of the personnel of your company?—A. I beg pardon, I have already said—

Q. I spoke then of the time of his introduction of you to Mr. Blaine. I say to you was Senator Blair aware at any time of the personnel of your company?—A. At any time? Only in part. I do not think he ever asked, and my recollection is clear that I never volunteered anything like a complete statement to him as to the parties associated in the matter.

Q. Did he not know who your stockholders were?—A. Only incidentally, and as to a few individuals. He never had anything like a complete list of them.

Q. He did know, however, that certain gentlemen were interested in your enterprise?—A. He did know as to some.

Q. And you refuse to name those gentlemen?—A. Oh, I refuse to answer at all upon the merely personal matters that concern the Peruvian Company.

Q. I ask you about the Peruvian Company, and you refuse to name any gentleman connected with that company?—A. I do.

Q. You and Senator Blair understood, did you not, that the dispatch to General Hurlbut of August 4 was written to meet your views expressed to him in the interview of July 25?—A. I so understood, and Senator Blair said to me that he so understood.

Q. Did you observe a material change of tone and purpose in this dispatch from the tenor of the instructions of June 15 given to General Hurlbut? In the dispatch of August 4, Secretary Blaine spoke of the Cochet claim as one to be looked into. Nothing is said of countenancing the assistance of Peru by "friendly powers." Instead of treating the dismemberment of Peru as a thing not to be done, the possibility is discussed, and it is declared that if Chili takes any Peruvian territory she must take it subject to the lien of the demand of Landreau. These things constitute, when taken together, a very different programme, do they not, from that of the *Crédit Industriel*, which was approved by Secretary Evarts and acquiesced in by Secretary Blaine in his instructions of June 15?—A. I do not know that I am competent to express an opinion on that subject.

Q. Did you have any conversation with Senator Blair upon that subject?

The WITNESS. Upon the subject of the difference between the two dispatches?

Mr. BELMONT. Yes.

The WITNESS. I have no recollection of any conversation on that subject. I do not remember that it was ever suggested that the two dispatches were inharmonious in any way.

Q. However, you have stated that Secretary Blaine, in the interview with you, informed you that the *Crédit Industriel* was, in the language attributed to him by you, in the testimony already taken, a very respectable concern, having a large amount of ready cash, and that he recommended you to trade with those fellows, apparently on the basis of pitting an American claim which you had against their respectability and ready cash; did you act upon that suggestion?—A. I did not. ■

Q. You did not endeavor to bring about any arrangement with the *Crédit Industriel*?—A. Not at all, sir.

Q. You were satisfied with the dispatch of August 4, and thought it unnecessary, did you?—A. I did not connect the dispatch of August 4 with that suggestion in any way. That dispatch would have made no difference with reference to a possible negotiation.

Q. Why did not you adopt the suggestion?—A. Why, I simply had the feeling that if there was to be a negotiation, the overture must come from the other side.

Q. Did it come from the other side at any time; did you have any conversation with the agent of the *Crédit Industriel* at any time?—A. Not directly. I have had a number of overtures brought me by gentlemen who were intimate with me, which I understood to be—which I was told were—preliminary overtures.

Q. Who was the agent of the *Crédit Industriel*?—A. I refer to Mr. Suarez, the recognized agent.

Q. Did you have any conversation with him?—A. I have never met him personally.

Q. You had no communication with him directly or indirectly?—A. I say verbal messages have been brought me, which I was told to construe as preliminary overtures, but I never made any response to them.

Q. Then you did not adopt this suggestion?—A. I did not. I was not aware that we were lacking either in respectability or cash.

Q. What was your construction of the suggestion made by the Secretary?—A. I did not construe it; I received it as he gave it.

Q. What did he advise you to do?—A. His suggestion I understood to be that here were people who had raised money for a specific purpose of interfering in this matter in Peru; the money was ready and the scheme was complete. They represented not only the money in hand, but had large resources behind. They represented a large French political influence, as I understood, and the suggestion in a general way was that here was a sort of ready-made concern that might be utilized by us, and, perhaps, to special advantage, inasmuch as we had frankly disclosed to him at the time that our organization was entirely inchoate. I received the suggestion as made, and if there had come from the *Crédit Industriel* a direct, responsible, business-like overture, I do not say that it might not have been entertained. But nothing came in a direct, responsible way, which convinced me that we had any object in making any specific overtures.

Q. You were entirely satisfied with things as they were?—A. Entirely.

Q. You had no reason to doubt Mr. Blaine's fidelity to your interests, or readiness to act on your suggestions even to the extent of rebuking the envoy of the United States by cable, under a hint from you, until you were notified, suddenly, by Mr. Blaine, in a letter dated December 3, 1881, that he did not regard you as sufficiently responsible to prosecute you for an attempted bribery? I should like to have your opinion of that letter, in view of your past relations with the department.—A. If the examiner will indulge me, I should rather not undertake to give my opinion of that letter as testimony here. It could only be, apparently, a characterization of Mr. Blaine's personal and official course, and whatever opinion I may entertain I do not want to volunteer it. If I spoke, I should speak of him just as I would of any other man, and that might seem indelicate in view of the high offices he has held.

Q. You have changed your opinion in regard to these matters since your interview in the *New York Herald* of January 27, in which you state to a reporter that "in this letter of December 3d the Secretary intimates to me that there are reasons why the State Department would not refer it [that is, the letter of June 2d] to the Attorney-General for criminal action." Then you go on to say: "Yes, there are reasons, grave reasons, but not such as he would be likely to avow without reserve." What do you mean by that? This was a statement to be published, and for which you are responsible.—A. I would like to say with regard to published interviews, that I am not responsible for anything that has ever been published in the way of an interview with me in any newspaper, because of that publication; for I am compelled to say that a very considerable proportion of what has been published as "interviews" with me is purely imaginary. I never said it.

Mr. BELMONT. Well, Mr. Chairman, in that case it will be necessary to summon the reporter of this interview, whoever he is. We can find that out—I mean this interview in the *New York Herald*.

Mr. BLOUNT. Possibly Mr. Shipherd may accept that as a correct report.

The WITNESS. I can state, with regard to an interview in the *New York Herald*—I think, the only considerable one published in that paper—that about one-half of it is entirely authentic, and I am entirely responsible for it. The other half of it, as I advised the editor within an hour of the time I saw it in print, was absolutely bogus.

The CHAIRMAN. I think it would be well to direct the witness's attention to that portion of the interview which he says is authentic.

By Mr. BELMONT:

Q. Did you say to this reporter, "He intimates in his letter to me that there are reasons why the State Department would not refer it to the Attorney-General for criminal action"?—A. Yes, sir; there are reasons—grave reasons—but not such as he would be likely to avow without reserve"—A. The only way in which I can answer that—

Q. I want to know whether you said that?—A. I have to answer that in my own way. The only way in which I can identify the portions of that interview, which are genuine, is to inspect the text of the article. It is divided into two parts, for one of which I am responsible, and for the other I am not, and a glance at the text would enable me to state.

Mr. BELMONT. I have here a copy of the newspaper, fortunately. [Handing paper referred to to the witness.]

The WITNESS. [After examining paper.] The portion of this interview for which I am responsible begins at the sub-title, "A second interview." All that follows that is accurate.

Q. You were asked: "Q. Why did Mr. Blaine attack you so savagely?—A. Excuse me from answering that now. Q. Do you know?—A. I do. Q. Why not tell?—A. The time has not come yet. Q. Will you tell by and by?—A. When the right time comes.

Q. When will that time come?—A. That depends upon Mr. Blaine." Are you responsible for that statement?—A. I am.

Q. Is not this the time to tell?—A. It does not seem to me to be the time.

Q. Then you think you will choose your own time?—A. I said it depended upon Mr. Blaine, and I mean exactly that.

Q. What do you mean by that?—A. Something that lies entirely within my own mind. If Mr. Blaine takes certain positions at certain times, and performs certain actions, I shall have something to say. I am waiting for him to pursue his own course.

Q. Then you refuse to answer my question until Mr. Blaine does something or other?—A. I don't understand that I refused to answer any question of the examiner.

Q. You have refused to answer my question as to the letter of December 3d.—A. I did not intend to refuse.

Q. I asked you why Mr. Blaine attacked you so savagely in that letter of December 3d.—A. I did not know that that question had been asked.

Q. I ask you now?—A. Oh, you ask me now! Well, I have my own opinion about it which I characterized in that interview as knowledge. It is knowledge within the limitations that necessarily apply. I suppose I know definitely why he did. After all, that is a matter of opinion when brought to the last analysis rather than absolute knowledge.

Q. I want to know it in view of the relations which you held or appear to have held with the department during the whole summer.—A. I have not intended to refuse to give my opinion, for it is an opinion, but I will go on and give it if the committee wish it, and I understand their silence to be approval. My opinion in the premises has been, and is, this—but I must protest again that I do not choose to give it, or prefer to give it, as it seems to me merely an opinion.

Mr. ORTH. I would like to make a suggestion. To what extent, in an investigation like this, can a witness be called on to give his opinion, and how far would the rules that obtain in an ordinary court of justice apply here?

The CHAIRMAN. I would prefer to leave that matter to the committee. We are now inquiring as to the relations of the witness to the Secretary of State. Our whole inquiry is directed to that point; as to the conduct of public officers. Now, it is sufficient to say that there is a mystery thrown around this transaction by the testimony of the witness. There are certain things which he can disclose or not disclose which are conditional upon the action of the Secretary of State. My own opinion is that the witness should state everything within his knowledge bearing upon that relation, regardless of what the Secretary of State may or may not do, if it is a fact. If it is imagination, or opinion based on no fact, it certainly seems to me that it is not competent testimony.

The WITNESS. It is opinion based, if on anything, upon fact—entirely upon fact. But it is merely my inferences from a series of facts. Yet, when the committee know exactly what it is, then they are welcome to it if they want it.

The CHAIRMAN. It is so vague and mysterious that it is difficult for me to determine that. You might ask the witness whether there are any facts upon which this opinion of his is based, that he has not stated heretofore.

Mr. BLOUNT. My opinion is that it will be best to let the witness go on and make his statement in his own way, and if there is anything in this, it will appear.

The CHAIRMAN. I am inclined to think that that would leave it a mystery, and that we are entitled to know just what it is.

Mr. RICE. I do not think it is competent, but I am entirely willing it should go on.

Mr. LORD. I do not think, as far as I am able to see, that it is strictly in accordance with the technicalities of a legal investigation; yet, for the sake of getting at the truth, I think the witness should be allowed to testify in the manner he is doing.

The CHAIRMAN. It seems to be the opinion of the committee that the witness should be allowed to go on and make his statement.

The WITNESS. I wish it to go into the record that if I go on it is because I am required to do so, and not because I choose to do it; because I say again that I am merely giving my opinion, and as for myself I do not think that to be strictly competent testimony, and do not prefer to give it.

Mr. DEUSTER. Is the opinion based on facts?

The WITNESS. It is my construction of all that passed during the summer, including of course, that letter. It goes to show, so far as I can show, why I think the Secretary of State changed his base in an instant.

Mr. BELMONT. I should like to have that question answered in your statement as you choose to make it.

The CHAIRMAN. I understand that your opinion is based on fact.

The WITNESS. Based solely on the facts—facts of the record substantially disclosed already, I think; but there may be additional facts. I think there are some additional facts which I shall state in this connection.

The CHAIRMAN. The witness can state the facts, and the committee can draw their

own conclusions as to them. But if there is any opinion based on any fact not disclosed, then the committee should have it.

Mr. BLOUNT. I would suggest that the witness be allowed to give the additional facts in his possession in connection with what we have already in the record.

Mr. ORTH. There is no objection, I think, to his giving any additional facts.

Mr. BELMONT. I think we should have as full a statement as possible.

The CHAIRMAN. The witness may proceed.

The WITNESS. Upon the whole of the record, disclosed and undisclosed (and the committee will of course recognize the fact that there must be a thousand details and incidents that are not disclosed yet, and that in the nature of things I cannot undertake to disclose, because they have dropped out of my memory, but which made their impression at the time)—I say upon the whole record of my relations with the Secretary of State, beginning with the 30th of May, when General Hurlbut brought me what I understood to be the authoritative declaration of at least the State Department, until the time when I received the letter of December 3, my belief is this: That the Secretary of State intended in absolute good faith to co-operate with me, as he always intimated, suggested, implied, and declared that he would, up to about the 17th day of November. That belief is founded upon an unbroken, absolute, harmonious, and consolidated history. What I mean by this is, that there never was a suggestion or an intimation made to me by the Secretary, or brought to me in any wise as coming from the Secretary, that he was not in as cordial and co-operative relations with me, I may say, as any stockholder in my company, though, of course, upon an entirely different footing. But as to his absolute good faith, nothing occurred during the whole of the summer (and I give this as a general fact) which awakened a suspicion that he was not in all respects as cordially co-operating with me as I supposed him to be. When the letter of December 3 reached me, which was perhaps on the 6th or 7th of December, it fell upon me like a bolt from a clear sky. Nothing had occurred to prepare me for it. I think, without exception, it was the most absolute surprise of my whole life, and I was unable for days to account to myself for it. I could not imagine what had happened.

If I had then been aware of the correspondence that passed between Mr. Hurlbut and Mr. Blaine, up to the 17th of November, say, I should have been prepared for it; but that correspondence was not published until long after I received this letter. I was therefore in entire ignorance of it. I had the impression that General Hurlbut, having waited in vain for somebody to come down there and interpret to him the letter of June 2, had made up his mind that there was nothing in my appeals. I inferred that from the letter he had written to me. But I never imagined that there was any such sympathy between General Hurlbut and Secretary Blaine that that state of mind in General Hurlbut would induce anything like a corresponding state of mind in the Secretary of State. The opinion which I finally came to with regard to the reason for this change of base was therefore matured after some considerable time only. And it is this: I think that Secretary Blaine looked upon this scheme without going absolutely into its merits in detail; I do not think he ever formulated in his own mind an exact adjudication with regard to the merits of the Cochet claim at all. I think he was content to leave that to proper legal investigation at the proper time; that he went through the summer on the theory that the probability was, upon the assurance given him by Senator Blair and the statement brought to him that Governor Boutwell and other attorneys had concurred as to the merits of the claim—that he went through the summer with the impression that here was something that he might be able to utilize properly and legitimately as Secretary of State at the proper moment in bringing about an adjustment between Peru and Chili; that he intended to insert this claim, as it were, between the teeth of Chili, which I understood him to consider as a sort of devouring lion, and upon it to make an appeal to Chili for a readjustment with Peru.

I think that was the purpose he carried in mind all summer. I do not think he ever intended to commit himself on the merits of the claim definitely at all; I never understood him to do so; but I understood him to assume that the merits were sufficiently good to authorize him to do what he did do to carry it along in such shape that it might be under his hand when the time came for him to utilize it. Now, when General Hurlbut, whom I distinguish entirely in my mind from Secretary Blaine as to the possible individual interest he had in the matter—

The CHAIRMAN. If it will not interrupt you, right here I would like to ask you this: I infer, then, that your opinion was that the aims and object of the Secretary were purely political in connection with this matter?

The WITNESS. I never for a moment have supposed that Mr. Blaine expected or intended himself to have any personal relation to or interest in this claim whatever. I think that he looked upon it as Secretary of State, from his official view point, in the light of, what I understand to be, his duty with reference to Peru and Chili. That is, I understand all along that he thought that at the proper time he ought to interfere in the name of the United States and compel a settlement, and that he calculated,

officially, to bring this thing in proper diplomatic relations at the time of the official settlement.

The CHAIRMAN. And that the only use that he made or expected to make of it was for official purposes?

The WITNESS. Exclusively so. Nothing ever transpired that caused any different impression or suggestion on my mind.

The CHAIRMAN. And nothing ever occurred between you and him at any of these various interviews to produce a different impression?

The WITNESS. No, sir; nothing ever came to me on the wings of the wind that suggested that he expected or desired to utilize this claim for his own benefit; I believe he looked at it as the head of the Cabinet, for proper political purposes. When I went to him in October with reference to General Hurlbut, and brought to his attention these charges against General Hurlbut, I did notice what I thought a very remarkable change in his manner, as I have already indicated. He addressed to me language that I considered, and still consider, to be positively discourteous. I thought that he had forgotten the ordinary proprieties of life between gentlemen. He said, "What business have you to make an errand boy of the American minister? If he had thrown all the stuff in the fire he would have served you right." I was amazed to hear the Secretary of State talk in that way, and I asked myself immediately, "What can this mean?"

The answer that suggested itself was, "You have struck somebody who is very near to the Secretary; you have put your finger upon a spot which is not on the Secretary's person, but which, nevertheless, is very sensitive to him. He does not propose to encourage you in any way to make suggestions or insinuations of this kind in regard to General Hurlbut." That was the impression on my mind, and it was made very deeply. I went away with the impression that in making the suggestions I had to him in regard to General Hurlbut, I had very deeply offended him personally; because I had, as he considered, attacked somebody who stood very near to him, and whom he was disposed to defend. This impression was very deeply confirmed when he reported to me the result of his going to the bottom of this thing. I thought if that was the way in which he proposed to investigate such allegations as this, it was absolutely clear that he did not propose to find out any facts that might be disagreeable. Still, I had seen no suggestion—there was no suggestion of any modification of his attitude toward our claim; he was merely sensitive as to what he considered my attack on General Hurlbut. When the interview of November 3d (I think it was, although it may have been on October 14th) occurred, this bit of conversation came in, which made a very deep impression on my mind, and I am now able to speak somewhat directly about a suggestion that I have made heretofore that I would say something in regard to my relations to General Hurlbut's official reputation. At that time the papers were discussing vigorously the question whether General Hurlbut's published memoranda and bulletins of various sorts which so angered Chili were authorized at the State Department; and I was applied to, I think, by every or nearly every paper in New York, to disclose any information or opinion that I might have upon that point. I noticed that with the single exception of the World, which I believe is edited by General Hurlbut's brother—I think with that single exception every paper I saw was down on General Hurlbut, on the assumption that he had exceeded his instructions. My relations to the Secretary of State had led me to believe that he had not exceeded his instructions at all, and I took every opportunity afforded me by responding, not only to editors but to representative gentlemen who called upon me, with the assurance, "I believe that it will be found that General Hurlbut is doing exactly what he has been told to do."

I defended him as cordially and heartily as though he had been my brother; and it was that exactly that I had in mind when I gave him the assurance that if he co-operated with us as his chief here was co-operating, we would gladly reciprocate. That reciprocation was then going on. I was then defending him in season and out of season. At the interview then, either of October or November, I forget which, something was said which brought up this general question, and I said, "Mr. Secretary, I have not hesitated to defend General Hurlbut, and especially with regard to his memorandum to Admiral or General Lynch—I forget his title—a memorandum which excited a great deal of attention and provoked a great deal of criticism. I remember particularly being applied to on that point, not only by New York editors, but by correspondents of the London newspapers, who seemed to think it a question of the utmost importance whether the State Department had authorized such a writing as that. This matter came up, and I said to the Secretary, "Mr. Secretary, I may have gone too far, but I am defending General Hurlbut; I am asserting, in season and out of season, that he has done just what you have told him to do."

The CHAIRMAN. When was this?

The WITNESS. Either in the October or November interview—I think in the interview in November. He seemed pleased and a good deal interested; rubbed his hands and smiled very cordially; and after a moment's hesitation he said: "Gentlemen, there are various ways to give diplomatic instructions."

Mr. BELMONT. Was anybody else present at this time?

The WITNESS. Senator Blair must have been present; and if it was at the November interview, Mr. Cilley was present. He said, "We not only write on the lines to a trained diplomat, but we write between the lines, and sometimes we write on the margin, too." He says, "I can give you an illustration of that. In the time of George IV, the Duke of York had charge of the diplomatic dispatches, and he was the brother of the King. There was an admiral somebody"—I think he stated his name—"in command of a large fleet at a distance from home, and most critically situated. The turn of a copper might represent the very slight force necessary to precipitate war. It was absolutely necessary that the British Government should not be responsible for any declaration of war. But they did want to fight. So the dispatches were prepared with great care, and in such form that they would read remarkably well when published, and they instructed the admiral, with no end of cautions, that he must not do this, that, or the other thing; and they tied him up so that in effect he could not have fought a battle. After they were all finished the Duke of York took a pencil and wrote on the margin, 'That is all right, Bill, but God damn 'em, give 'em hell.'" The committee will excuse me, but I am giving the Secretary's words *verbatim*. "Now," said Mr. Blaine, "within 24 hours after the admiral received that dispatch, with that marginal note, one of the great battles of history was fought, contrary to his official dispatches, but exactly as his government wanted him to do."

Sometime later than that—not many weeks later—I was applied to—and I connect this fact with the other, because the committee will see that it is a connected fact, although it did not occur between me and the Secretary; some weeks after this interview, I had a conversation with an intimate friend of General Hurlbut's, who was complaining to me most bitterly (I think after the publication of the dispatches) that Mr. Blaine had ruined General Hurlbut by leading him on to do exactly what he wanted done, and then publicly disavowing the responsibility for it. The complaint was made by such a person, and under such circumstances, that I felt warranted in repeating this conversation. A most surprising and startled look came into my interlocutor's face as he said, "Did he say that? Then I have him. I have in my possession a dispatch, on the margin of which, in Mr. Blaine's handwriting, is written, 'Go it, Stephen.'"

Now, these facts, I say, made a profound impression on my mind after I received the letter of December 3. I thought I saw how Secretary Blaine could deem it proper to lead a minister—to lead such a man as myself—on a certain line up to a certain point and then drop him.

After the correspondence was published I saw General Hurlbut's report upon the Cochet claim, which Secretary Blaine alluded to in his letter to me as an examination and a decision—it is no examination at all; according to his own statement he simply said that he had not been able to find out anything very distinctly about it. In response to that, on the 17th of November, the Secretary says, "That is very proper; you can drop it and pay no further attention to it." There was never any examination or adjudication or anything approximating that, either by General Hurlbut or the Secretary of State, as the official correspondence shows. But General Hurlbut sends up all my letters, and the impression made upon my mind was that he had at that time concluded that there was nobody going to come down and construe that letter of June 2 the way he wanted it construed, and therefore he sends everything up here.

The Secretary then takes up the same key-note that he struck on the 13th of October, when, in response to my reaching after General Hurlbut's head, he struck me in the face a very strong blow. On the 17th of November he writes to General Hurlbut, "I have received all these letters, and you need not pay any further attention to this man Shipherd or his claim."

On the 3d of December the time had come when the Secretary of State, as I was advised, had found that he could not stay in the Cabinet any longer. The time had come when it was clear to him that neither he nor General Hurlbut could ever be useful in carrying out this scheme in any way, and he said to himself, "Now, if what has passed between Senator Blair, Mr. Shipherd, and myself, ever comes out, it will be late for me then to undertake to explain it, and I will finish him beforehand. I will put on the records of the State Department a letter in advance, which will show that I never took any interest in the thing at all; that I always knew he was loony and was a fraud, and always knew he was trying to corrupt my ambassador." This I know now, or sufficiently know it. In a word, I regard that letter of December 7 as just as deliberate an attempt to assassinate a man's character and a great interest as has ever been recorded in history. It was an attempt to assassinate, and nothing else, for the purpose of washing his hands in the presence of the public. That is my opinion, gentlemen, based upon the facts I have suggested.

Q. Who was this person who had seen the dispatch stating, "Go it, Stephen"?—
A. Mr. William Henry Hurlbut, editor of the New York *World*.

By Mr. BLOUNT:

Q. Do I understand you to say that he said he had the paper himself?—A. I understood him to say that he had the paper in his possession, and that he proposed to use it.

By Mr. WALKER:

Q. With that indorsement on the margin?—A. Yes, sir.

By Mr. BELMONT:

Q. Did you ever hear any suggestion of any possibility of a war with Chili, in your conversations with the Secretary or with Senator Blair, or any of these gentlemen?—A. That subject was never alluded to, I think, in the hearing of the Secretary of State or of Senator Blair. Such suggestions came to me from without.

Q. Did you receive a letter from Senator Blair in which this statement is made: "I can only now assure you that the United States will utter her voice a manner which will mark an era in American diplomacy. The matter is being prepared, and within a week or two you will know what is done. You should act at once as though the American ships of war were on the way to the Pacific coast. Perfect your plans. Everything here has been just as you have wanted it all the time." Did you receive that letter from Senator Blair?—A. Yes, sir.

Q. Will you produce that letter?—A. No, sir.

Q. You will not?—A. No, sir.

Q. Will you give a reason?—A. Yes, sir; because it is a private letter. I have published so much of it. For that I am responsible, and for that I am ready to be examined; the balance of it is private.

Q. You swear that you received that letter?—A. Yes, sir.

The committee adjourned.

WASHINGTON, D. C., *April 14, 1882.*

The examination of Jacob R. Shipherd was resumed, as follows:

By Mr. BELMONT:

Question. Did you say yesterday that the "go it, Stephen" dispatch was in possession of Mr. W. H. Hurlbut, or that he had seen this dispatch with the marginal note on it in Washington?—Answer. I understood Mr. Hurlbut to say to me that "I have in my possession such a paper." I may, of course, have misunderstood him.

Q. When I asked you if you ever heard of any such suggestion of the possibility of a war with Chili in conversation with the Secretary or Senator Blair, you answered that the subject was never alluded to, you thought, in the presence of the Secretary of State. Did Senator Blair ever mention the subject to you in conversation?—A. I have no recollection that that subject was ever discussed between us.

Q. Did he ever mention the subject?—A. I was about to say that if it was ever mentioned it must have been in some casual way which leaves no recollection in my mind. I have no recollection that it was ever mentioned.

Q. Did he ever write to you about it in any other letter than the one which was read yesterday, in which he speaks of American ships of war as about to start for South America?—A. I have no recollection that any suggestion similar to that referred to yesterday was ever made either in writing or in conversation. I think that is unique.

Q. Have you refused to produce the letters of Senator Blair?—A. Yes, sir.

Q. Was the question of a war with Chili ever mentioned by the attorney of the Landreau claim?—A. I do not think it was.

Q. Do you know if General Grant wrote a letter to the Peruvian minister, Mr. Camacho, in which he says he thought it was about time for the United States to step in?—A. I have no recollection of hearing of such a letter. I certainly never saw any such.

Q. I understand that when Secretary Blaine was explaining to you how he could send diplomatic instructions to General Hurlbut which, when read by Congress, would mean one thing, and by General Hurlbut would mean another, he began by using the word "gentlemen," as if a number of persons were present. Who was present besides yourself at that interview?—A. My recollection is that that conversation was on the 3d of November; if it was not, I think it must have been on the 13th of October. Senator Blair was present at both those interviews; and on the 3d November Mr. Cilley was also present. That is the best information I can give about that.

Q. You say you have no recollection whatever in any conversation, or in any letters, except the one which was read yesterday, that the question of peace or war was considered?

The WITNESS. Do you limit that to relations with Senator Blair?

Mr. BELMONT. No; relations with Senator Blair or members of the Peruvian Company—any one interested in the prosecution of the claim?

A. Oh! there were discussions at various times in my hearing, and to which I was a party, with regard to the suggestions; they were always based upon suggestions that appeared in print, and particularly upon suggestions thrown out by the Chilean minister, as we understood that there would be war between Chili and the United States if the United States undertook to enforce its views upon the contending parties. These suggestions coming always, as I understood it, from the Chilean legation, were commented upon at various times by persons in my presence; but I have no recollection of anything like a serious discussion of the possibility of war with Chili to which I was a party, or that it was ever had in my presence. So far as I know, we always regarded it as the merest idle babble.

Q. What was the construction of the Lynch memorandum?—A. I do not think I have read the Lynch memorandum since it was first published, and the points of it are at the moment very hazy in my mind. I can only answer as to general impressions as they lie in my recollection at the moment, and will give those if the examiner wishes them.

Mr. BELMONT. I do not think that is necessary. Well, then, Mr. Shipherd, I shall pass on to this question. You said yesterday, "If Mr. Blaine takes a certain position at certain times in a certain direction, I shall have something to say. I am waiting for him to pursue his own course." I should like to know what you meant by that.—

A. I am very sorry not to be able to gratify the examiner.

Q. You do not seem to answer any question this morning, and I have asked you a number.—A. I intend to answer to the best of my ability. What I had in my mind at that time was as exclusively a private and individual thought as a man can hold, and I cannot conceive of any circumstances under which I can properly be called upon to divulge it.

Q. Then you do not consider yet that the time has come for giving the reason why Mr. Blaine wrote you the letter of December 3?—A. I yielded to the wish of the committee yesterday, so far as to explain very fully, as I thought or intended to do without reserve, my theory of the case.

Q. Very well, but you say here "I shall have something to say, and I am waiting for him to pursue his own course." Something to say about what?—A. About what passed between him and myself during the summer.

Q. That is just what this investigation is for.—A. Either I have misunderstood the examiner or he has misunderstood me, and I will attempt to explain. I have, without reserve, in my testimony yesterday, outlined my theory of the whole case as called for. I have stated to the committee what at the time of that interview I stated, that I intended not to tell until Mr. Blaine assumed perhaps a certain attitude.

Q. For instance?—A. I understood the question of the examiner this morning to inquire what attitude of Mr. Blaine's I had in mind, and this I begged to be excused from entering into, for it is purely a subjective matter, and cannot concern anybody but myself. But the theory of the case I have stated at the request of the committee, and in advance of the time which I had in mind when I limited it in that conversation.

Q. Still, when you say, "I shall have something to say"—A. O, I may have additional suggestions to make, but they will be what I intended then to say—what I intend now to say. If I say anything further it will be with reference to Mr. Blaine personally. If I make any statement it will be a purely personal statement, such as cannot concern this investigation, as I understand it, under any circumstances. I have not intended to withhold anything from the committee.

Q. They concern the committee in this respect, that it is intimated in an interview here which you have held with the reporter that there are reasons why the State Department would not refer your letter to the Attorney-General for prosecution?—A. That suggestion was intended to be confined entirely to Mr. Blaine, and as he is no longer a part of the government, I take it he will have nothing more to do with pushing that matter.

Q. We are referring to the transaction that took place when he was a part of the government. I should like to know what reasons there could be why Mr. Blaine refrained from referring your letter to the Attorney-General for criminal action?—A. Well, I can suggest one of the reasons that I had in my mind at the time, and which has occupied my mind pretty fully since. That is, the general fact that the letter of December 3 was a piece of pure hypocrisy, and that nobody knew it better than Mr. Blaine.

Q. That would not be a reason for his not referring the letter to the Attorney-General?—A. I am answering the question as to what lay in my mind.

Q. You say that is only one of the reasons. We want the real reason, or else it is unnecessary to answer the question. Will you give the real reason?—A. I was proceeding to give one of the real reasons—as real a reason in my mind as any other—I

was proceeding to give the chief reason, and the only reason also, that I thought could interest the committee or the public.

Q. Was there any correspondence between yourself and Secretary Blaine?—A. I have already stated that all the correspondence between Secretary Blaine and myself has been printed and is in the hands of the committee.

Q. What is meant here by this statement? You say, "I dare Mr. Blaine to publish all the correspondence between us." What is the meaning of that?—A. Just what it says. The whole of the correspondence has been published, and if Mr. Blaine is satisfied with it I am, most eminently. But the correspondence alone was not what I had in mind.

Q. What did you have in mind?—A. I had in mind the whole of the record which has now been substantially outlined.

Q. In any of the conferences between you and the attorneys or friends of the Peruvian Company, was the retention by President Arthur of Secretary Blaine in the State Department spoken of as likely to influence the question of peace or war between Chili and Peru?—A. O, I think it may have been casually commented upon; I do not think it was very seriously discussed. I am endeavoring to answer the very pith of the question. I do not think that any of our people ever supposed that Mr. Blaine would succeed in getting this country into war with Chili as long as President Arthur was in the Presidential chair. We had no apprehensions on that point, and therefore never seriously discussed the matter as a serious issue.

Q. You have stated that you had a letter of introduction to President Arthur from General Grant. Did you present it to him?—A. I did.

Q. What took place at the interview?—A. If the examiner please, I have had some hesitation in regard to the propriety of repeating what occurred in an interview between myself and the President of the United States, simply with reference to the character of the officer with whom I was conferring. I do not know that there is any proper line drawn which would privilege the President of the United States. I have no hesitation myself, so far as I am concerned, in discussing the whole interview; but if the examiner and the committee will indulge me, I would like to ask whether, after I have stated, as I now do, that nothing occurred at that interview in any way relating to the allegations which this committee are directed to inquire about—that is, with reference to any possible relations of any minister or other officers of the United States to that company—nothing, I say, in that interview occurred having any relation to this. I would like to ask whether the committee, after that statement, would like to have me go into the interview, and if they think I ought to, I will do so.

Mr. ORTH. Was there anything said about this company?—A. There was nothing said bearing directly or indirectly on any allegations concerning which the committee are now inquiring—that is, any possible relations of any minister or officers of the United States to the Peruvian Company.

By Mr. BELMONT:

Q. Did it have any reference at all to the Peruvian Company in any way?—A. Yes, sir.

Q. Then I would like to know what it is.—A. I beg the examiner's indulgence while I ask if this committee has any authority to investigate the Peruvian Company.

Mr. BELMONT. It is ordered to do so by the House.

The WITNESS. It is ordered to make a demand; but I do not understand that demand as widening in any way the allegations on which the committee are to inquire. If the House had ordered the committee to inquire into the private accounts of August Belmont & Co., on the ground that it had been stated that August Belmont had some connection with this company, and the name had been mentioned—if the committee had been ordered, on the ground that his name had been connected with the Peruvian Company, to call upon Messrs. August Belmont & Co. to send all their books and papers down here to be examined into, I take it, somebody might raise the point that there was no jurisdiction. I take it that the point I raise is just as well taken.

Mr. BELMONT. It is unnecessary to go into that discussion, it seems to me, because I am asking you what occurred at an interview which you say took place; that is all. It is not a question of accounts or of the private affairs of anybody. It is a question of what occurred at an interview.

The WITNESS. I decline to answer the question, on the ground that this committee has not been properly authorized to investigate the affairs of the Peruvian Company; that whatever passed between the President and myself at that interview did not concern any of the allegations which this committee has been authorized to inquire into.

Q. But it did not concern the affairs of the Peruvian Company?—A. Yes, sir; but this committee has not been authorized to investigate the Peruvian Company generally.

Q. And you decline to answer?—A. Yes, sir; on that ground.

Q. I believe you said you would produce a copy of a letter of introduction to President Arthur; did I not understand that yesterday?—A. I did not intend to state that.

I stated that I had a copy of the letter, that the letter was not written by me nor addressed to me, and that I doubted my right to disclose a copy of a letter acquired under such circumstances.

Q. At what date was it written?—A. About the middle of November. If the examiner will allow me, I would like to define my statement. I will cheerfully produce it upon the consent or approval of either General Grant, who wrote it, or the President, who received it. I simply doubt the propriety of my stepping in between these two gentlemen and disclosing a copy of a letter which it is somewhat doubtful whether I ought to have made a copy of, although it was sent to me open, as a letter of introduction usually is.

Q. What was the date of the interview?—A. It was approximately the 18th November.

Q. On the 17th November, Mr. Blaine sent a dispatch to General Hurlbut in which he cast some reflections on the Peruvian Company, I believe?—A. I think not on the company, but he told General Hurlbut that he need not pay any further attention to the Cochet claim.

Q. On the 19th November he sent a very different dispatch?—A. Yes, sir.

Q. And you have stated that perhaps he was told to write it?—A. Yes, sir.

Q. I would like to know what that meant, taking the dates as an indication. You say you had your interview with the President on the 18th. If Mr. Blaine's dispatch on the 17th cast certain reflections upon your company, that of the 19th took them all back, and perhaps he was told to write it, as you say. I would like to know what that all means. You will see, Mr. Shipherd, the importance of inquiring into the affairs of the Peruvian Company, that seem to be public affairs.—A. Any remark of that kind that I may have made was made, as I understand it, in precisely the same guessing mood in which I noticed several able editors to be making similar suggestions about that time. I remember very well that there was a very loud call in the columns of the New York Sun to know what had occurred on the 18th of November to so amazingly change the tone of the dispatches of the Secretary of State between the 17th and the 19th.

Mr. BELMONT. Very naturally.

The WITNESS. I am not aware that I ever made or authorized in writing or for publication in any way any comment upon that.

Q. Can you explain now?—A. As a matter of fact, I think I did remark in private conversation, perhaps, when two or three gentlemen were present, to some one raising the same question, "Well, it is just possible that Mr. Blaine had some suggestions from the White House." I simply know the chronological fact that one dispatch was written on the 17th of November and another dispatch on the 19th.

Q. And very different in tone?—A. Yes, sir.

Q. And in which the Peruvian Company is described as being composed of reputable gentlemen?—A. Yes, sir.

Q. That is the dispatch of November 19th?—A. Yes, sir.

Q. The dispatch of November 17th, on the contrary, would imply that the Peruvian Company was a bubble—I say that was the implication?—A. The implication was that the Cochet claim might as well be shelved.

A. But then, I understand, that, for diplomatic purposes, as you have stated, the Cochet and the Landreau claims were to be considered as one?—A. Yes, sir.

Q. Is it possible that in the dispatch of November 19 the Landreau claim was indicated?—A. It is possible; I cannot undertake to limit the possibilities of the Secretary's mind.

Q. I should like to know whether it was not the Landreau claim alone which was indicated, for this reason (another coincidence of dates I have noticed in this), that the letter of the Secretary was written on December 3, in which he repudiates you, Mr. Shipherd, entirely, as being a person not responsible in any sense, and on December 10 you wrote a letter to Mr. Boutwell, which you requested should be shown to the Secretary of State; whoever he might be, and to that letter there is a postscript written by Senator Eaton. I should like to ask if he was not the attorney of the Landreau claim?—A. I have never known that Senator Eaton was distinctly —

Q. Was he the attorney of the Landreau claim?—A. I can only state my own knowledge.

Q. That is what I want.—A. I have never known that Senator Eaton was the attorney or an attorney in the Landreau claim in any form. On the contrary, when I retained him for the Peruvian Company, I properly questioned him in regard to that point, and he stated he had known about the claim, but he never had made any commitments as counsel or otherwise in its favor, and he accepted the retainer of the Peruvian Company in such a form as to bind him absolutely to its interests.

Q. And that combined the two claims, did it, for diplomatic purposes?—A. Yes, sir, temporarily.

Q. Your postscript to the letter of December 10 is as follows: "Since this was written, and before signature, Senator Eaton came [that is, to your office] and I read

it to him with care, for criticism. His only comment was: 'Do not change a word; if you have occasion to do so, refer critics to me.'" This letter was sent to Mr. Boutwell to be shown to the Secretary of State, whoever he might be at that time. On the 16th of December Mr. Blaine wrote his last dispatch to South America, in which he says in effect that there shall be no treaty of peace without a recognition of the Landreau claim. Do you know whether this letter of December 10 was shown to Secretary Blaine?—A. I have no knowledge on that subject.

Q. Do you know that it was not shown to him?—A. I have no knowledge on the subject.

Q. You sent it to Governor Boutwell and it was received by him?—A. Yes, sir; it was received by him.

Q. Did he acknowledge its receipt?—A. He acknowledged its receipt, either by letter or verbally.

Q. Did he ever tell you that he had shown the letter to the Secretary?—A. I think nothing was ever said between us as to the exhibition of the letter.

Q. Did he ever say that this letter had any effect upon the dispatch of December 16?—A. Oh, no, sir.

Q. Did you ever hear any such thing?—A. I never heard the two letters connected in any way.

Q. What was your purpose in writing this letter, and what was the reason that Senator Eaton said to you, "Do not change a word, and if you have occasion to do so, refer critics to me?" What was the reason for sending this letter? It seems to me this was taking a great deal of trouble unless it had a purpose.—A. I do not think I should have written such a letter as that without a purpose and a pretty definite one.

Q. What was that purpose?—A. The purpose was to place in the hands of Governor Boutwell, as my representative near the State Department, my comments upon, and response to, the letter of December 3; to be by Governor Boutwell used in his discretion in the State Department.

Q. Then the dispatch of December 16 follows. Of course, you do not know when it was shown to the Secretary, if it was shown to him, do you?—A. No, sir; I have no knowledge on that point.

Q. This, you say, was your reply to the letter of December 3?—A. Yes, sir.

Q. And you have said that you have still more—something more that you will say?—A. Something more that I may say under possible circumstances.

Q. Depending upon Mr. Blaine's position under certain circumstances?—A. Yes, sir; I think it depends probably on him. Of course, other circumstances may bring it out.

Q. How could it depend on him now; he is not in office?—A. I have already endeavored to state that I have given—

Mr. BELMONT. That is a very interesting point.

The CHAIRMAN (Mr. Orth). Let the witness answer fully.

The WITNESS. I have endeavored to state that I have not intentionally reserved from the committee any comments in the premises except those which I consider purely personal to Mr. Blaine and myself, such suggestions as not only this committee cannot need, but such as I think would be improper to obtrude on the public attention. I do not want a private quarrel, if there is one, to attain any unnecessary publicity.

Q. The dispatch of December 3, you know, is an official letter?—A. Yes, sir; there runs through it, however, a personal *animus* which I separate from its official character. I have made my response to the letter as an official letter. I certainly should not wish to hold the State Department as officially responsible for what I regard as the real essence of that letter. If I did, I should move out of the country.

Q. What did you regard as the real essence of that letter?—A. I suggested that yesterday; that it was an attempt to assassinate a man and an interest, and to hold this government responsible for the assassination.

Q. You stated in answer to a question of the chairman yesterday that, in your opinion, the aim and purpose of the Secretary was purely political. Will you explain what that meant?—A. If I recognize the quotation, it is from statements I made in answer to interjected questions of the chairman. If I recollect right, he asked whether I understood at any time that Mr. Blaine was going to make any use of this claim otherwise than as Secretary of State in the interest of the whole United States. I understood that to be the drift of his question, and I answered unhesitatingly that I never understood—

Q. But I am referring more particularly to the policy you had in mind when you say the purposes were political.—A. I was not aware that the question yesterday was intended to call out anything except my impression of the Secretary's personal intent, and I only spoke to that. I never got the impression from the Secretary that he expected ever to take any personal interest in this thing or make any personal use of it.

Q. But what I want to know is whether he took up the claim for the purpose of

enforcing it against Peru or to use it as a cause for war against Chili?—A. I never gathered from anything that passed between the Secretary and myself, directly or indirectly, that he had the remotest intention of involving this country in a war with Chili. I never gathered from anything that ever passed between the Secretary and myself, directly or indirectly, that the Secretary of State intended, desired, or expected that there would ever be a war between Chili and the United States. There was never anything that passed that suggested such a thing, and, as I was about to say, so far as I and my associates were concerned, we never heard from any quarter any suggestions with regard to a possible war with Chili that we did not understand to have come as threats from the Chilean legation, and that we did not pass by as the idlest babble. I am giving my impressions, but knowledge is what I suppose is called for.

Q. You have no knowledge on the subject?—A. No knowledge further than I have stated, within the range of parties whom I met.

Q. What was the meaning of Senator Blair when he wrote to you, "Perfect your plans as if American ships of war were on their way to the Pacific coast"?—A. I cannot undertake to state what his meaning was. I can only undertake to state the impression made on my mind. I understand it to mean simply this: you are as safe in relying upon what the United States is about to do as if the United States were going to send out a fleet. I did not understand that it was an intimation that a fleet was going out at all, but I understood it to be merely an emphatic assurance that the United States was going to take a step which would make our interests perfectly and absolutely safe.

Q. And that your claim would be enforced?—A. Yes, substantially; that it would also lay a foundation for the enforcement of it. It would take the attitude which would make it possible for us to get what belonged to us. I think I should say further that I distinctly understood that to be a purely diplomatic attitude; that whatever was to be accomplished would be accomplished by diplomatic negotiations and declarations. I never understood from Senator Blair or anybody connected with the government that there was going to be any military demonstration.

Q. Those are your impressions?—A. Yes, sir; that is what I understand is called for.

Q. What was your impression of the meaning of the marginal note of which you spoke yesterday, the "Go it, Stephen" dispatch, as you call it?—A. The impression made upon my mind was that the story the Secretary told us of that marginal note was probably associated in the Secretary's mind with this matter, and that the marginal note was probably an offspring of the historical incident to which his attention had been called.

Q. And, therefore, the marginal note had no meaning?—A. I understood it to convey the same meaning that he told me the note sent to the British admiral did.

Q. What meaning was that?—A. The meaning was that in the instructions the real wish of the government was entirely independent of the dispatch, and that the admiral was to go on and fight the battle; and I suppose in the same way it was meant that General Hurlbut should go along in the course he was pursuing of laying down the law to Chili. Of course, that is merely my impression.

Mr. RICE. Was that a telegraphic dispatch?

The WITNESS. The one in which the marginal note appeared?

Mr. RICE. Yes.

The WITNESS. I did not so understand it.

By Mr. BELMONT:

Q. It really only meant that he was to go on in the course he was pursuing?—A. That was my inference in putting the two things together. If the Secretary had not given me this incident I should not have known what to make of the other note, but I understood Mr. Hurlbut to look upon the story I told him as a lamp that threw a flood of light on that annotation.

Q. You have stated that Senator Blair accepted his fee from you because he understood from the Secretary that the whole matter would be settled in the State Department. Perhaps you can explain what was meant by the whole matter being settled in the State Department?—A. I do not know how I can make that any plainer.

Q. In Mr. Blair's letter to you he says that everything is being prepared, and within a week or two you will know what is done. What was the date of that letter?—A. I have forgotten. I could not tell without reference to data in my office.

Q. Did you learn what was done?—A. I do not think that any communication, orally or in writing, from Senator Blair succeeded that letter, which I understood to be a fulfillment of the promise there made. I never was notified specifically of any marked step taken by the government which would correspond to the suggestion there made.

Q. Well, do you know what was done?—A. I only know from the diplomatic cor-

respondence since published. I suppose I could identify in that correspondence what the Senator had in mind, but that would be merely my guess.

Q. You have written to General Hurlbut that "the most radical suggestions of policy have the autographic approval of General Grant." You have said that you will produce that, as I understand?—A. Yes, sir.

Q. Will you now say whether those suggestions of policy have any reference to war?—A. If the examiner will indulge me I would rather not undertake to give anything pertaining to the substance of the memorandum upon which that indorsement was made, because I propose to produce the original, and the committee will then see all there is of it.

Q. I ask you for a simple statement, as to whether it does or does not refer to the question of war?—A. I decline to state, under the circumstances, anything about the contents of those papers. I should only embarrass myself and give the committee no reliable information. I have not read them for months, and have only a general recollection of their tenor.

Q. Do you know whether any munitions of war or torpedoes were sent from the United States to Peru?—A. I never heard that there was, except there was a letter published in the New York Tribune from a correspondent down there, who I understood to be connected with the fleet. That correspondent gave quite an account of vessels to be sent, and, I think, stores to be sent. That is all I ever heard on the subject.

Q. Have you seen any indication of any expenditure of money by the Crédit Industriel through the influence of the diplomacy of the United States?—A. I wish the examiner would excuse me from answering that question. I could only give my impressions and inferences. I have no knowledge of any facts tending to prove or disprove the suggestion.

Q. Why did you allude yesterday to the sum of \$10,000?—A. I gave that as a part of a conversation.

Q. Why was it alluded to at that time?—A. I cannot tell. It did not come from me; the suggestion was made, I think, by Senator Blair; I think it must have been made by him.

Q. By whom else could it have been made?—A. I do not think by anybody else. There was nobody else there who would have made it. Of course it is possible it might have been made by the Secretary. The Secretary took part in the conversation, and my recollection is Senator Blair made, in a laughing way, the suggestion that General Hurlbut would rather have \$10,000 in cash given him than the privilege of buying a quarter of a million of stock, and the Secretary concurred in the probability that such a choice would be made. But it was merely a casual suggestion of that kind. I have no knowledge that \$10,000, or any other sum, was paid. I have stated to the committee all that I heard, which was, in effect, that General Hurlbut was presented with a house—the free use of it, and wine cellar, and all that sort of thing. These were all the precise facts alleged in my hearing.

Q. Why, then, did the Secretary at first take so much interest in the claim of the Peruvian Company?—A. I could not tell.

Q. Why, then, did he finally abandon the claim of the Peruvian Company?—A. I only guess, and I stated my guess yesterday very fully.

Q. Will you state it briefly now—very briefly?—A. I will state it very briefly. I think that he took hold of the claim in the first instance because he thought that *prima facie* it was a case he could use with propriety—in his diplomatic interference in South America with great advantage—that he probably could; and he carried it along all summer on what he considered a probability that at some critical time he would use it, and he left out everything unpleasant; and I think about the 3d of December concluded that he never would use it, and that he would sweep it out.

Q. Then you have no grievance at all that I can see?—A. I think I have some ground for grievance.

Q. You have not stated any, certainly, this morning?—A. I did not wish to restate it; I stated it yesterday.

By Mr. RICE:

Q. You thought just as the Secretary did during the summer, that he could use it beneficially to carry out American policy?—A. I did; I never discussed it with him on any other ground.

Q. And it was what you hoped he would do?—A. Yes, sir; I thought he could use it so that it would be of as much advantage to the United States, on the whole, as to our stockholders; that there was a mutual interest; that he could properly foster one end and aim while we did another. I never discussed it in any other light or theory. My grievance was, that after we had discussed it on that basis for several months, he should suddenly manufacture statements.

Mr. RICE. I should like to have Mr. Belmont press an answer to his last question. The only motive that you assign to him for having ceased to do as you thought he was doing, or to feel as you thought he was feeling, was, that he was not going to be Sec-

Secretary of State any longer, and therefore he could not use it—that there was no chance for him to use it, and that he would put a quietus upon it for anybody thereafter; is that what you mean?

The WITNESS. No, sir; yesterday afternoon I defined that specifically, or I endeavored to do so. My impression was that after General Hurlbut had written to him in such terms, the Secretary understood that General Hurlbut did not care to carry this thing forward any longer, and he lost his interest in it largely. Without imputing or intending to impute any suggestion that the Secretary of State might have shared anything that General Hurlbut had gotten—I do not mean anything of that kind; I merely mean this: that I understood Mr. Blaine's personal regard for General Hurlbut to be such that when General Hurlbut gave him the intimation that he did not care to be bothered with this, and more than that, that he considered my correspondence offensive, that then the Secretary, on personal grounds, espoused General Hurlbut's cause to such an extent that he was disposed to sweep the whole thing out primarily, for the reason that General Hurlbut did not care to be bothered with it; and, secondly, for the reason that, having been connected with it all summer long, it occurred to him, as a statesman and politician, that it would be well for him to prepare some evidence or testimony with reference to this thing, and that he wrote that letter and filed it in the State Department, made beforehand and intended to control the public mind as to the facts; that is my grievance.

Q. Among these letters, which you received from Secretary Blaine, did you ever have a letter from him in his own handwriting?—A. The letters from him were always signed by him but written by a clerk.

Q. You never had one in his own handwriting?—A. Not written in his own handwriting throughout, but I would like to say to the committee, in this connection, as Mr. Blaine's correspondence has been talked about and commented upon very recently, it has been frequently said in the newspapers that I have suggested or intimated that I had correspondence with Secretary Blaine which correspondence it would not be pleasant for him to have published. I never said or suggested anything of the kind to any living person.

Q. That was in that interview with the New York Herald reporter?—A. Yes, sir; that was a part of the bogus interview.

Mr. ORTH. Let us have your full answer to that question; have you completed your answer?

The WITNESS. Yes, sir.

Mr. BELMONT. The other statement, for which he is responsible, is the one about which I have been asking, and I got no answer.

The WITNESS. I was not aware that any question had been asked that was not answered.

Mr. BELMONT. Certainly; that is the question I asked some time ago, as to whether the right time had come for you to speak about certain matters.

The WITNESS. I answered that as far as I could.

By Mr. BELMONT:

Q. Were your clients interested in the claim known as the Landreau claim against the Peruvian Government at the time (that is, in April and May) you wrote to President Garfield and suggested that General Grant would probably be made president of the Peruvian Company?—A. The interest at that time was held by individuals. Individual clients who were then interested in the Cochet claim were independently interested, and very largely, in the Landreau claim, so they represented to me. I had no interest in the Landreau claim; I never was retained as attorney to prosecute it in any way, and whatever I have done for the Landreau claim has been done without compensation, present or promised, and merely as a courtesy to individual clients who were interested in both claims.

By Mr. RICE:

Q. Then the statement you made in your letter to Mr. Walker Blaine that you were the sole executive head of the Cochet and Landreau claims—in the first letter you wrote him—could not have been true, could it?—A. It was literally and absolutely true at that time for the purposes of that letter. These clients had requested me to treat the two claims as one at that time for diplomatic purposes only, and I had consented to do so as a courtesy to my clients, and not as a paid attorney; not as interested in it myself.

By Mr. BELMONT:

Q. Who were these attorneys of the Landreau claim?—A. I decline to state.

Q. We have already had the fact that on the 4th of August, 1881, the then Secretary of State sent a dispatch to the American minister in Lima instructing him to insist on a recognition of the claims of Landreau, disputed by Peru, as an essential condition of any treaty of peace between Chili and Peru, in terms which plainly indicated the intention of the United States to enforce compliance with that condition, if necessary, both upon Chili and Peru. Did your clients then have an interest in the claim of

Landreau?—A. I understand that, so far as my clients were interested in the Landreau claim, their interest has been continuous, and is still just what it was in April, 1881. I only know of that from their statements.

Q. You have stated that the two interests would be treated as one for diplomatic purposes. Did you expect at that time that your clients would become the owners of the Cochet interest, or were your clients at that time the owners of the Cochet interest?—A. They were part owners of the Cochet interest and part owners of the Landreau interest.

Q. Were they owners of the Cochet interest at that time?—A. Part owners only; that is, those who were part owners of the Landreau interest were but part owners of the Cochet interest.

Q. Did they own the Cochet interest?—A. Why, they owned individual shares in it. My clients, taken collectively, owned the Cochet interest, but only a part of those owners of the Cochet interest were owners of the Landreau interest. That is the distinction.

Q. On the 2d of June, 1881, you wrote to General Hurlbut a letter, in which, among other things, you said "that to the owners, for whom the United States Government will speak (if it speaks at all), the cost of the Cochet claim will be not less than \$100,000,000." Had the owners of the Cochet claim at the time of your letter of August 19 to General Hurlbut, then at Lima, expended not less than \$100,000,000 in purchasing that claim?—A. I decline to answer that question.

Q. Do you know for what amount the claim was purchased?—A. I decline to state.

Q. Had you not, on or before the 4th of August, 1881, urged the United States Government to speak through the Secretary of State for the owners of the Cochet claim, who had arranged to absorb the junior lien, known as the Landreau claim?—A. I have stated, to the best of my recollection and ability, all that I ever asked of the United States Government in behalf of the Cochet claim, and I have restated that.

Q. You have already testified before the committee in regard to an interview had by you with Governor Boutwell after he had for several weeks retained the papers in the Cochet case submitted by you to him. Have you his opinion on that case?—A. With all deference I do not see what bearing that question has on this issue. The merits of the Cochet claim are not before this committee in any way that I know of.

Q. We want to know why the United States Government made it a subject of diplomatic correspondence with a foreign government?—A. The late Secretary of State is the man to open that, and the only man who can do it.

Q. We want to know upon what evidence it was done.—A. I have stated upon what evidence. If the question was whether I had submitted the question to Governor Boutwell or anybody else, I should answer with pleasure.

Q. Did you?—A. I did not.

Q. What papers did you submit?—A. The printed papers here.

Q. Nothing more than that?—A. Nothing more than that and my letters. The committee have here every scrap of paper, so far as I know, submitted to the Secretary of State in regard to this claim.

Q. That is all the evidence submitted to the department on that claim?—A. Yes, sir.

Q. In the letter addressed by you August 19, 1881, to General Hurlbut at Lima, you inclosed a letter addressed to a Peruvian gentleman, Mr. Arizola, together with certain printed inclosures, which you asked General Hurlbut to deliver to a Peruvian (Mr. Arizola), whom you have described as the *alter ego* of President Calderon. That letter and those documents were intended by you, were they not, to advance the interests which you represented at that time—the Cochet interests and the Landreau interests—which, as you have said, were treated as one for diplomatic purposes?—A. The sole inducement to me to forward these papers was the expectation and the hope that they would promote the interests of the owners of the Cochet claim. Does that cover the ground of the question?

Q. You did not include the Landreau claim?—A. I am not aware that I have ever pushed the Landreau claim as a moneyed interest anywhere or under any circumstances. I have only consented that it should stand in certain relations to the Cochet claim in limited conditions and for special reasons.

Q. You knew that the Landreau claim was in dispute?—A. So I had heard.

Q. Did it not occur to you that in asking General Hurlbut to deliver this letter and these documents to the Peruvian Government you were using an officer of the United States in his official capacity?—A. I supposed that I was availing myself, with perfect propriety, of the existence of an American legation at Lima.

Q. To correspond directly with the Peruvian executive?—A. To correspond with no matter who, so long as the correspondence was in itself legitimate, whether private or public.

Q. This was intended as a correspondence directly with the Peruvian executive?—A. In effect, I suppose I was communicating indirectly only, but as a matter of fact directly, with President Calderon; that I was bringing my interests to his attention in

the form of a discussion of the interests—the possible interests—of Peru that might be promoted by the use of my scheme. I was looking out for my interests exclusively, and I was utilizing such collateral opportunities as occurred.

Q. And as a citizen you corresponded directly with the executive of a foreign country?—A. Well, I suppose it would amount to that.

Q. Although this Landreau claim, of which you have just spoken, was a subject of dispute between the two governments?—A. Yes, sir; I had nothing to do with it that should interfere with this correspondence. I had no quarrel with the Peruvian Government over the Landreau claim.

Q. Well, you know that it is a subject of dispute between the two governments?—A. I know that the Landreaus and the Peruvian Government had lots of trouble about it, but I had no concern on either side of the quarrel.

Q. Did you do this under the advice of counsel?—A. On the 19th of August—

Q. I mean, did you correspond directly?—A. I was trying to recall. I cannot at the moment recall with whom I conferred with regard to the matter. I certainly had counsel in the premises and did what I did after considerable consultation, but I cannot at the moment remember the details of the conferences, or with whom they may have been held.

Q. Still, you were following advice when you adopted this method of communicating with President Calderon?—A. I think I have taken no important step in connection with the matter since the first of May, 1881, except under advice, very careful advice. I can add an explanatory word to a recent answer, if the examiner wishes it, and may, perhaps, put in a clear light what my theory of the propriety of corresponding with President Calderon was.

Q. I should like to know.—A. It has been already suggested, but I should be glad to emphasize it to the committee. It was simply this: that everything that I could do to promote this negotiation without the aid of the United States Executive—that is, without burdening the United States Executive—I was bound to do. That has been suggested in one or two of the letters that have been printed, and it was a controlling theory with me that while I hoped always to be careful and not put myself where only the Government of the United States might properly stand, I considered it my first duty to do everything I could to put this negotiation in a prosperous way before I sought the aid of the Executive, that my claim upon the Executive might be for the least possible assistance.

Q. In your evidence, given before the committee last Friday, you say that you took pains to inclose to General Hurlbut, in this connection, a translation of the most important parts of the sealed letter to Arizola, so that he might see that that was, in effect, an attempt to present your case directly to President Calderon, and to present it in the interest of Peru. General Hurlbut, in reply to that letter, informed you that he had delivered the sealed letter, but said nothing of presenting the documents, and while you have testified that Mr. Blaine commended him for that, you have also testified that one of your counsel, Mr. Scott Lord, on the contrary, thought the delivery of the letter without the documents proved him to be, as you say, a doubly-damned, deeply-dyed villain.—A. I am not aware that I have testified that Secretary Blaine did approve that failure to deliver the documents. I never heard him approve it or suggest an approval of it. He only suggested, in a general way, that I had no business to trouble the American minister in the premises. That is the only suggestion I remember that he made bearing on that issue.

Q. I want to know if Mr. Lord used that expression. You have described an interview with him in a letter, which I do not find here now, giving it a very different construction.

The WITNESS. How is that?

Mr. BELMONT. You have given it a very different construction. Your quotation of Mr. Lord's language is very different in your letter from what it is in your testimony.

The WITNESS. Oh, no, sir.

Mr. BELMONT. It seems to me so.

The WITNESS. The examiner has entirely misapprehended the statements. In my letter I referred to Judge Lord's comments upon the three points that General Hurlbut raised as to the title. Mr. Lord said there is nothing in this—that is, these objections were not objections that presented any real difficulties. And my letter in answer to General Hurlbut's answers in detail his three points, and shows in detail that every point he raised there as an objection was fully answered—as lawyers use the phrase, was "answered by the facts" which I presented.

Q. Do you say that he did use that expression?—A. The examiner has misread one word and made an adverb of an adjective. The words were "doubly damned, deep" (not "deeply") "dyed villain."

Q. He used these words?—A. Yes, sir; he used exactly those words. They made a profound impression on me because he is a gentleman who does not use profane language under any circumstances.

Mr. RICE. Will your examination occupy several hours more, Mr. Belmont?

Mr. BELMONT. No; I shall have a very short examination to-morrow.

Mr. RICE. You will probably finish to-morrow?

Mr. BELMONT. I think so.

The further examination of the witness was then suspended until to-morrow morning, at 10.30 o'clock.

Mr. SEVELLON A. BROWN recalled.

By Mr. ORTH:

Question. I believe you have already been examined as a witness in this investigation?—Answer. I have.

Q. I find in the published correspondence of the State Department transmitted by the Executive to the House of Representatives on the 17th of February, on page 19 [Inclosure No. 25], these words: “(Indorsement): Simon Camacho to Manuel Arizola, sent me by Mr. Shipherd. (Private copy.)” I wish you would state to the committee whether you have brought the original of that letter with you, whether that indorsement is upon the original letter, and if so, by whom the indorsement which I have read was made.—A. The letter I have is a printed copy of extracts from the original letter which bears indorsement on the back in General Hurlbut’s handwriting, “Simon Camacho to Manuel Arizola, sent me by Mr. Shipherd.”

Q. You are familiar with General Hurlbut’s handwriting?—A. I am.

Q. And that indorsement is upon the back of the letter—the unsigned letter?—A. Yes, sir.

By Mr. RICE:

Q. And that letter was sent to the State Department in an inclosure from General Hurlbut?—A. Yes, sir; as an inclosure of General Hurlbut’s No. 25, the 2d of November, 1881.

By Mr. BLOUNT:

Q. You know Mr. Camacho well?—A. Yes, sir.

Q. Do you know his style of composition?—A. I am more or less familiar with it.

Q. What is your opinion, from your knowledge, as to whether this letter was from him or not; that is, composed by him?—A. That would be a difficult matter for me to state.

Q. Have you any opinion about it?—A. Yes, sir, I have; that the letter was written by him.

Q. Your opinion is that it was written by him?—A. That is my opinion.

Q. From what do you infer it?—A. I think there is a similarity in the style of composition between this and other notes I have read from him.

The committee then adjourned.

WASHINGTON, April 15, 1882.

The committee met at 10.30 a. m.

JACOB R. SHIPHERD recalled and further examined.

The following letter from the Hon. J. G. Blaine was read by the clerk:

WASHINGTON, D. C., April 14, 1882.

Hon. CHARLES G. WILLIAMS,
Chairman Committee on Foreign Affairs,
House of Representatives:

SIR: At the convenience of your committee, I desire to be heard in reference to the Peru-Chilian matters now under investigation. Awaiting your pleasure,
I am, very respectfully,

JAMES G. BLAINE.

The CHAIRMAN. This note was received last evening. If it be the pleasure of the committee I will address a note to Mr. Blaine, stating that the committee will hear him as soon as the examination of Mr. Shipherd is concluded. I understand that it is an expression on the part of Mr. Blaine that he desires to be heard whenever the committee are ready to hear him, and courtesy requires that I should acknowledge the receipt of the note. I will be governed by the direction of the committee as to when they will hear him.

Mr. BELMONT. Mr. Chairman, the witness has refused to answer a number of questions which are essential to the purposes of the investigation, and as this is a matter for the future consideration of the committee, I do not propose to take up any more time in the examination at present. I therefore bring my examination to a close.

The CHAIRMAN. Is there any other member of the committee who desires to examine Mr. Shipherd? If there is, he will proceed to do so.

Mr. WILSON. I yielded my right to examine the witness in favor of my friend, Mr. Belmont. I understand that Mr. Lord desires to propound some questions, however, and I will yield to him.

The CHAIRMAN. I was going to remark that Mr. Lord stood next on the list, but had yielded to Mr. Blount and Mr. Belmont, and I would be very glad to consult his wishes as well as yours also.

Mr. WILSON. I desire to do that.

The CHAIRMAN. I will say to the committee that I desire to conclude the examination as soon as possible, but I do not wish to dictate in regard to the matter.

Mr. LORD. I will say, Mr. Chairman, that, anticipating that Mr. Belmont would occupy to-day in his examination of the witness, and seeing less and less occasion for a further examination on my own part as the questioning went on, the ground being pretty well occupied and covered, I had determined not to ask any questions whatever. But if Mr. Belmont does not go on to-day, unless there are other members who would like to enter upon some new phase of the case with the witness, I will go on with a few questions; but my questions will be confined entirely to ground already gone over and will be something in the nature of a cross-examination on points regarding which the witness has been already interrogated.

Mr. BLOUNT. I trust that Mr. Lord will follow his own inclination about that matter.

The CHAIRMAN. That is the desire of the committee.

Mr. KASSON. I should like to have the resolution under which we are making this inquiry read, in order that the points involved in the jurisdiction of the committee may be fresh in our minds.

The clerk read the resolution as called for.

Mr. BELMONT. I should like to have the other resolution, in regard to our inquiry about the Peruvian Company, read also.

The clerk read the resolution of March 16, 1882, as requested.

By Mr. LORD :

Q. In the early part of your examination you testified that you dealt with General Hurlbut as a recognized criminal—so recognized by yourself?—A. I beg pardon. I do not think I testified to that. I testified, or intended to testify, that I dealt with General Hurlbut as with a recognized criminal, that is, in a parallel spirit; not implying that General Hurlbut was a criminal, but that I dealt with him as such, that is, in a like spirit of temper in which I would have dealt with a recognized criminal, a distinction which is very important.

Q. Then you dealt with him as you would have dealt with a recognized criminal; that is the distinction which you make?—A. Yes, sir.

Q. My impression is that you are recorded as saying that you dealt with him as a recognized criminal, but you say you dealt with him as you would have dealt with a recognized criminal; is that your correction?—A. Yes, sir; that is my correction, and I deem it very important.

Q. Did your counsel at that time know that you so dealt with him—that you recognized the necessity of dealing with him as a recognized criminal?—A. So far as the matter was discussed between myself and those with whom I consulted, the discussion was entirely free. The past record of General Hurlbut, as a whole, was considered, and considered substantially, so far as I recollect, exactly as it has been stated and suggested to the committee.

Q. Please answer my question. Was it by the advice of your counsel? You have stated that on scanning his record you dealt with him as you would with a recognized criminal. Was that by advice of counsel?—A. The dealings I had with him were had pursuant to counsel which I took.

Q. Was this particular counsel through whose introduction you obtained access to the Secretary of State your counsel at that time?—A. No, sir.

Q. Then, at that time you did not consult him as to the necessity of dealing with General Hurlbut as a recognized criminal?—A. At that time I had never seen Senator Blair.

Q. In regard to your letter of June 2 to Mr. Hurlbut, which you describe as well constructed, you meant to testify that it was so equivocally constructed that it would appear to one with whom it was necessary to deal as a criminal, to carry a promise which you, as a virtuous man, did not intend to be bound by?—A. No, sir; that was not the idea.

Q. Well, what was it?—A. The idea was to make a suggestion upon its face absolutely true and proper, which would not mislead, in my judgment, and as far as my intention went, any honest man to suppose that he could be improperly interested in this scheme, but which, if a man were dishonest—were such a man as I supposed General Hurlbut to be—might so far, according to the construction he would put upon it,

mislead him as to stay him from the direct anticipatory attack upon us which alone I sought by writing this letter to ward off. So far forth I meant, if he were a bad man, to mislead him.

Q. And you regarded him as a bad man, as you said just now in your reply, and you not only dealt with him as a bad man, but as a man whom you believed to be what you have repeated just now.—A. I have not said that; I will be obliged to the reporter if he will read my exact language.

[The reporter read the previous answer to the witness, as requested.]

Q. You supposed him to be a dishonest man, then, and dealt with him as such?—

A. Yes, sir.

Q. Still, you held out to him what you desired him to understand as a promise?—

A. No, sir.

Q. Supposing him to be a bad man?—A. No, sir.

Q. Well, you have testified that it was a letter somewhat artfully constructed, so that it made to him, at least, a suggestion that if he withheld from doing anything to your damage he might have \$250,000 of the stock of your company, upon terms to be suggested by himself, provided the whole thing were perfectly proper, and that you and he were subsequently to agree upon what was proper before he could get anything; and while he would take one side of that proposition you would be very likely to take the other. Have you not testified to that?—A. No, sir.

Q. Well, then, you have been misunderstood.—A. I have testified to the statements that correspond strictly to a part of that, but, if the examiner please, the statement is voluminous and there are two or three points wrong.

Q. Please correct it where it is in any way exceptional to what you have testified.

Mr. WILSON. This, I believe, is the language that the witness has used in his previous testimony as recorded on page 65 of the testimony taken before the committee.

“Mr. SHIPHERD. Yes; not only because I deemed him purchasable, but a man who would insist on being purchased or provided for in some way as a condition of his not opposing us.”

The WITNESS. If the examiner please, I can sum up the testimony which I have given, as I believe, or that I have intended to give, and which I am prepared to repeat substantially in this form. My knowledge of General Hurlbut, concerning the accuracy of which I have never attempted to make myself responsible, except only to say that it was all the knowledge I had—my knowledge of General Hurlbut, as a whole, impressed me profoundly with the belief that he, being minister to Peru, I was compelled to deal with him to a certain extent, and in dealing with him I would be compelled to deal with a man who would strike me from the first, unless in some manner, standing upon the defensive, I prepared myself to ward off his blow. Now, what I have to say is, that the act, whatever it was, was purely on the defensive, as a man might strike another in defense, or as a man might shoot another in defense. I stood upon the defensive, and I took on the attitude I did solely because I supposed myself to be dealing with a man against whom I must defend myself, and that seasonably. I have never said, intended to say, or intimated, that as a matter of fact General Hurlbut was a bad man. I have only said and protested that all I knew of him compelled me, for the time being at least, to treat him as a bad man, to treat him as a man I must defend myself against, and defend myself seasonably.

Q. I do not see that your statement gives any explanation of your testimony as it was formerly understood by me. Now, if you did not intend to hold out to him prospects of reward which you did not intend that he should realize, even if he did refrain from getting in your way and making an obstruction to your progress, then what do you mean, or what did you mean, when you said you thought it was “about as neat a way of handing him the soaped end of a stick as you could contrive,” “as you have testified?—A. If any difference should at any time arise in my contemplation between me and General Hurlbut as to the true meaning in that letter, I expected that difference to arise strictly along the line suggested in the words “so far as may be perfectly proper.” And if the committee—as I suppose this question is intended to draw out somewhat fully whatever comment I have to make—if the committee will indulge me, I will, by a suggestion or two, I think, perhaps show more clearly what lay in my mind. Now, as to the question of proprieties. I did not intend entirely to mislead General Hurlbut at all; that is, I did not intend to suggest to him that he or his friends might possibly have an interest in this at some time, when, in fact, I never intended that he should have any. I did not mean that. I meant what I said, that, so far as it should be found proper, he or his friends might buy stock in this concern. Now, if the committee please, I suppose there will be no difference of opinion at this table, or at any other around which representative men are gathered, that the general fact where the line of propriety lies, in a case like this, is always debatable ground, and one upon which gentlemen equally conscientious will always differ. There might be an entire propriety proved by General Hurlbut’s family—

Q. I do not care to hear any long commentary upon the philosophy of your answer. I think we have your answer substantially. Now, I will ask you further. After the

most careful preparation, you elaborated a note of three or four lines, so that if addressed to a man in your opinion a criminal it would be a promise or a suggestion of a promise, and in case he was persuaded there was something in it for him, you could say "I really promised nothing," because of the conditional phraseology in it which if he construed it one way you could another, and until you both construed it the same way he could realize nothing; even if, through the means of that letter, your object should have been accomplished, that is, to restrain him from obstructing your proceeding yet, as you have said you were absolutely safe, and as the committee understood safe for the reason that you were not bound to give him anything even if he should suppose that upon your promise he had corruptly earned it.—A. Yes, sir; upon that point I intended to keep myself perfectly safe. I did not intend that he should have anything in the shape of a promise upon which he might base a claim for an improper interest in this concern. I put out that letter to test his own moral tastes and ideas, and I left it to him to construe it.

Q. Did you have any opinion as to what construction General Hurlbut would put upon that letter?—A. I do not know that I could say an opinion. I had an expectation.

Q. Was that upon the theory of his being a villain?—A. Entirely.

Q. Then you concluded that he would understand that you had made him an offer of a reward for his indulgence, did you, or at least for his refraining to get in your way?—A. I expected that it would make this impression on his mind; that he would say to himself, "These people are willing to give me a show; they have hedged it about with limitations, but it will ultimately be put in some practicable form, so that directly or indirectly I can have such an interest as I think I ought to have under the circumstances." I expected he would reason thus to himself.

Q. Then you made him a proposition, did you, which you intended, if it should ever come to a settlement between you, to construe as a virtuous proposition made for an honorable purpose, but which you expected him to regard as a vicious proposition made to a recognized criminal, and until you and he should agree upon the moral character of that proposition you would have nothing to pay, and he would have nothing to realize. Was that your theory?—A. In part.

Q. Was it not wholly so?—A. No, sir.

Q. It was in part so?—A. Yes, sir; in part.

Q. Well, we will leave that branch of the subject. How long prior to the interview of the 25th and 26th of July with the Secretary of State did the person you describe as your counsel become your counsel?—A. I have referred to a number of persons by name, and to others without naming them, as my counsel.

Q. I refer to Senator Blair.—A. I have already stated in detail to the committee that so far as Senator Blair acted in the premises prior to a date some weeks following the 25th of July, he acted only as volunteer counsel; that is, he performed services such as counsel might have performed, but not distinctly under recognition as a counsel, because he declined a retainer. But, to answer the purport of the question, Senator Blair's first interview with me occurred not more than a week prior to the 25th of July.

Q. You have previously said that he did not advise in regard to the preparation of this letter of the 2d of June to General Hurlbut?—A. Yes, sir; he knew nothing of it at the time it was written.

Q. But he knew of it afterwards?—A. Yes, sir.

Q. And did you not then talk over the moral qualities of the person to whom it was addressed, and the adaptation of the letter to his supposed character, with Senator Blair?—A. I do not think there was any very full discussion of the matter. All the points that the examiner's question implies were alluded to or mentioned in a summary way; they were all considered, General Hurlbut's record and all. These things were considered summarily with reference to this letter, and it was distinctly stated by me, as I understood it to be distinctly recognized by Senator Blair, that the letter was framed as it was because it was sent to a man having such a record as General Hurlbut had.

Q. Then he agreed with you, did he, as to the probable character of the minister—of General Hurlbut?—A. I cannot undertake to recall the phraseology, but the impression left on my mind was that he agreed entirely with me.

Q. He agreed with you upon the propriety of addressing such a letter, upon such a theory as you had?—A. I understood him to do so; that is, I do not remember that there was any dissent or criticism suggested.

Q. Well, you had that letter by heart, and you seem to have treasured its memory as a very perfect production of its kind. Did you recite that letter or show a copy of it to another of your counsel, Mr. Boutwell?—A. The letter was discussed with Governor Boutwell.

Q. Did Governor Boutwell agree with you and your other counsel, Senator Blair, as to the proper adaptation of the letter to the character of the man?—A. I think that the comment that Governor Boutwell made upon the letter was like this: "That letter, Shipherd, taken as a whole, is plain enough to any careful reader, but it may be read

in a way which will provoke criticism, and if I had been advised with I should have doubted the expediency of sending it." I think that is just about a summary of the suggestion that the governor made.

Q. You had a five hours' talk with your counsel, the Senator, at New York, before you had the interview with the Secretary of State, had you?—A. Something like that—four to five hours.

Q. Was that meeting and that conversation intended in any way to influence the instructions that should ultimately be given to Mr. Hurlbut, as minister to Peru?—A. Well, I can only say that at that time the immediate interest I had concerned itself with the question whether I might secure at that time—

Q. Please tell me in plain terms whether that long consultation was with a view of influencing the instructions about to be made out to the minister at Peru by the Secretary of State?—A. I shall have to ask the indulgence of the examiner for permission to answer that question in my own way; I cannot answer that question by yes or no.

Q. Well, do not make a long statement. You shall answer in your own way, but be as brief as you can in replying to the question.—A. My recollection is that at that time my chief and controlling interest connected itself with the question whether I could get the attention of the Secretary of State to this matter as far as it then stood, and that I turned Senator Blair's attention in this consultation almost entirely, so far as I was seeking, either in my own thought or in my expressed conversation, any help from him—I turned it to that point "Can we get the Secretary of State to attend to this?" I do not think at that time I had any definite idea as to influencing instructions at all. But I will say, if I am compelled to answer, in a general way, that I supposed if I required access to the Secretary of State I should be able, within proper limits, to influence instructions and so far forth I was seeking through Senator Blair to influence instructions.

Q. At whose suggestion did you employ your counsel?—A. I decline to state.

Q. Have you already stated that Governor Boutwell arranged the employment of your counsel?—A. I have stated that Governor Boutwell expressed the opinion that Senator Blair would be more likely than perhaps any one else to persuade the Secretary of State to take the matter up promptly.

Q. And did you say that Mr. Cragin also advised it?—A. I said that Mr. Cragin introduced Senator Blair to me.

Q. And your object, under the advice of counsel, in employing that Senator (and you were influenced in the matter largely by that fact) was the access that it would give you to the Secretary of State.—A. Yes, sir; I was seeking access to the State Department.

Q. And for that reason you employed that particular counsel?—A. Only in part. For that reason at that time I sought the active assistance of that counsel. I asked him to see if he could open the door of the State Department for me then promptly.

Q. What was the manner of his compensation?—A. I decline to state anything in regard to his compensation.

Q. You have testified that he declined to receive a fee, and you have testified that he afterwards received a fee and that he afterwards returned it, have you not?—A. Yes, sir.

Q. Then you had paid him a retaining fee?—A. Yes, sir.

Q. Was that in cash?—A. I decline to state.

Q. Then you decline to state whether he returned any cash?—A. I have stated all the facts in regard to that retainer that I think properly called for.

Q. You refuse to answer further in regard to that?—A. Yes, sir.

Q. You say he served you gratuitously as counsel for a considerable length of time?—A. It became a gratuity when he returned his fee.

Q. But before?—A. O, yes, before.

Q. Before the five hours' interview?—A. Yes, sir.

Q. At that time he was acting without fee?—A. He was acting without fee. Whatever service he performed he performed without any charge to me.

Q. Was there any expectation of interest or reward on his part at that time, or any encouragement thereto, given by yourself?—A. There was nothing passed between us concerning that at that time except the statement, on our part, that we were prepared to pay, and the statement on his part that he was not then prepared to consider any suggestion of pay, present or future.

Q. You say, on page 42, "Towards the close of the interview the Senator, having freshly assured me that his judgment as to the interest of the whole United States in this case (it was thus he phrased it) would impose upon him as a Senator the official duty of forwarding a legal inquiry into the validity of this claim and of engaging the executive to take such proper action in the premises as might seem expedient, said that he would be glad to have me meet the Secretary of State" &c. Now, was it upon the ground that he might have to do with this matter as a Senator of the United States that he declined to take any fee, and afterwards, having taken a fee, he de-

clined it and returned it; was it on the ground of the possibility of its coming before Congress?—A. I did not understand him to decline a fee on the ground that it was already, perhaps, his duty as a Senator to forward this interest, but solely on the ground that these interests might possibly come before him sitting in a *quasi* judicial capacity as a Senator, and in such an event he thought he ought not to have been previously counsel in the case.

Q. Have you testified that when he accepted that fee he did it upon the ground of the probable settlement of the whole case in the Department of State?—A. So he stated to me.

Q. And when he became doubtful of its being settled in the Department of State, and the possibility again arose of its coming before Congress, then he returned the fee?—A. I understood that to be exactly the situation.

Q. You sought his employment then as counsel on the ground it would give you access to the Secretary of State, and you expected this counsel to be influential with the Secretary of State. Was anything said between you and him or between you and your counsel as to the propriety of his being counsel for you in a matter that might be settled by the Secretary of State in regard to the propriety of that, while it might be improper for him to act as your counsel in a matter that might come before the Senate of the United States?—A. I do not think any suggestion of impropriety in that relation was ever made in my hearing.

Q. No question of that distinction was ever raised or discussed?—A. If I rightly understand the purport of the examiner's question I do not think it was ever raised.

Q. Then it was his, and Governor Bontwell's, and the Secretary of State's assumption that he might properly, although a Senator, appear for you as counsel before the Secretary of State, while he might not properly be a paid counsel as a Senator of the United States. That is your understanding of the case?—A. I so understood it; yes, sir.

Q. Well, now, recurring again, Mr. Shipherd, to your letter of the 2d of June, which you seem always pleased to contemplate on account of its admirable adaptation to its purpose—

The WITNESS. I beg your pardon.

Mr. LORD. Yes; you have reminded us of that a great many times, and you seem to regard that letter with great complacency.

The WITNESS. I do not think the examiner has a right to make any statement of that kind to me as a witness.

Q. Then I will withdraw it, but I will recur to it again. You recited this letter verbatim to the Secretary of State at the interview you have described, and in the presence of your counsel, Senator Blair, in that night and day interview of the 25th or 26th of July, and you did it somewhat in this way: You said to the Secretary of State: "There is another letter, Mr. Secretary, which I do not think you have seen; I wrote to General Hurlbut early in June, and I then quoted to him verbatim this letter to General Hurlbut. There are very few letters which I carry verbatim in my mind, but I had my own reasons for having this letter always before me. I mentioned the fact that General Hurlbut did not come to see me in New York as he had promised to do before sailing, although, as I understood, he was a week in New York at that time, and I thought it was a little odd. I said, 'You see, Mr. Secretary, that I did not succeed in buying him if he thought that I was trying to.' Some remark was made previously by the third party present [whom you afterwards described to be your counsel, Senator Blair] as to the folly of attempting to seduce General Hurlbut by offering to sell him stock." Now, in what respect did you understand Senator Blair to call your attention to the folly of it? Was it because you had offered to sell him stock rather than to give him stock, or to reward him in some more palpable form than an offer to sell him stock; was that it?—A. The impression made on my mind was—

Q. Tell us what you think he meant by the "folly" of it.—A. That is what I was trying to state.

Mr. LORD. Very well, go on.

A. The impression made on my mind by the Senator's comment was, that it was more than anything else a playful comment; that it was playful because upon all the record there the situation might perhaps be too serious to be seriously inquired into; the idea following, in a word, that Senator Blair regarded General Hurlbut as a man whose record it was courteous and charitable to pass over rather than to inquire into, and that his reference to the subject was intended courteously and playfully to just touch it and pass on. That was the general impression that was made by the comment, whatever it was, on my mind.

Q. It was also playful on the part of the Secretary of State, was it, when the Secretary nodded and laughed, and said that he "did not think that would fetch him," or some remark of that kind?—A. I understood the Secretary to share exactly the view of the case which the Senator had.

Q. And you have already testified that the view the Senator had was that the minister was a recognized villain and had proof of your dealing with him as such?—A. I

was not aware that I had testified to just that; something equivalent to that might have come out of it.

Q. Equivalent to that is sufficient when you say there was not the slightest intimation given by the Secretary that he saw anything improper in the letter at the time?—A. That is very certain, sir.

Q. At that interview there were three of you and you were dealing with General Hurlbut as if he were a recognized criminal and you had come there to influence his instructions. Your counsel commented on the folly and the inadequacy of the reward with which you had attempted to influence him. That counsel was a Senator of the United States. There was present the Secretary of State, and you were discussing his instructions to his minister, and he playfully remarked that he did not think that “we (apparently including you three) would catch him in that way.” Now, how did you understand that conversation? Did you understand it that you were all three of you dealing with a recognized villain, or with a man as if he were a recognized villain?—A. If the examiner please, his questions are tending so far in the direction of pure speculation that I scarcely follow them with clearness.

Q. No. I am confining your testimony exactly to the record, and I am making my questions as brief as I can state them.—A. The examiner is calling for pure impressions, and impressions under such limitations of definition in his questions, that it is not easy, always, to answer them. Now, I did not have in my mind at this interview, in the prominent way in which it seems to stand before the examiner’s mind, an idea of General Hurlbut as a dreadful villain; I did not understand that Senator Blair was thinking about him as a villain; I did not understand that the Secretary of State was thinking about him as a villain; I do not think any such idea was before our minds. But reference had been made, in connection with this letter, to General Hurlbut’s past record.

Mr. LORD. Never mind; you need not proceed any further.

The WITNESS. If the examiner will allow me to finish the answer as I have begun it, I will be obliged to him. I was saying, that the general disposition of all three of us, as I understood, was, to touch that record very lightly and pass on. I had no disposition to discuss it; and what I said was said merely in an explanatory way, and, if the Secretary chose so to take it, apologetically for having addressed such a letter to a minister. I understood Senator Blair’s comments, in which the Secretary acquiesced, to recognize the fact that General Hurlbut’s record was as it was, and that we had better pass on. That was the sentiment and the atmosphere of the interview at that time.

Q. When the Secretary of State said, laughingly, that he did not think “we would catch him in that way,” what did he mean by the word “we”?—A. I understood that to refer to me and those associated with me.

Q. Did it mean the Peruvian Company?—A. There was no company then; I represented an interest.

Q. Then you took it as a jocose remark on his part and on the part of Senator Blair?—A. Yes, sir; and I will say further, that I did not understand it to be necessarily a recognition by the Secretary of State of the assumption that General Hurlbut was purchasable. I was only struck and impressed with the fact that he did not seem to see anything very shocking in it, or anything which he thought it worth while to give any serious attention to. There was a touch and a pass on.

Q. How recently had you dismissed the idea of General Hurlbut’s being a man with whom you were dealing as a recognized criminal? At the time of this conversation you say you were not seriously treating him in that light.—A. I did not know that I had said that.

Q. Why, yes; you just said that at this interview you were not seriously regarding him as a corrupt man?—A. I did not have it in my mind in the prominent way in which it seems to stand in the examiner’s mind.

Q. You had dismissed that view of his character for the time being, then, had you?—A. No sir; but it lay as a back thought in the background; it did not stand out in as prominent and emphatic a way as I understand the examiner now to bring it out.

Q. In your subsequent transactions, and in your various correspondence with the Department of State and with Minister Hurlbut, extending through the summer and up late into the autumn, did you continue to regard the minister in the same light that you did when you commenced your negotiations with him on the second of June?—

A. My general impression with regard to General Hurlbut’s way of looking at things has not varied, except to be deepened and confirmed from the beginning until this time.

Q. Then your impression as to his being a criminal continued to deepen and become more and more confirmed, did it, until the very last?—A. Yes, sir; and it was emphatically deepened when I read a published letter of his, or what purported to be a letter of his, in which he officially denounced the Peruvian Company as a fraud and a swindle. I thought a minister who would write such a letter as that, under all the

facts, was a man who had very different ideas of propriety from those I had been brought up under.

Q. Then what did you mean in one of your letters to General Hurlbut where you praised him for his patriotism, and so on, and said that you should stand by him and defend him as a brother; in what did the fraternal relationship between you consist?—A. The letter contains its own limitations and definitions and I think needs no comment from me. I proposed that so far as he showed himself worthy, in my judgment, of fraternal recognition, so far I would recognize him.

Q. Then there were recognized criminals in the public service whom you could encourage with the assurance that you would stand by them and defend them as brothers; and this was one, notwithstanding your opinion of him, to whom you wrote praising him for his patriotism and fidelity and saying that you would stand by him as a brother?—A. Oh, my letters show for themselves exactly what I said, and I do not think they will be aided by any paraphrase.

Q. You never realized any advantage to the Peruvian Company from your correspondence and dealings with General Hurlbut, did you?—A. Oh, yes, sir; a great deal of advantage.

Q. And did you realize that in the sense in which you intended in your letter of the 2d of June?—A. To a very limited extent. I thought at times he was disposed to give us at least an opportunity to take care of ourselves; and wherever I recognized any disposition of that sort, however slight on his part, I gave him full credit for it. But the advantages that have resulted to us, I think have resulted for the most part without any intentional co-operation on his part, or from any good-will of his.

Q. Have you regarded his influence and conduct as rather, on the whole, obstructive to your enterprise?—A. The positions which he took as a whole, I have regarded as entirely obstructive.

Q. Then whatever may have been the intention of your letter to him, you did not realize the advantage you expected from it?—A. No, sir; I understood—

Q. That is sufficient.—A. I understood him as a matter of fact, in effect and after a while, to take exactly the position I apprehended at the outset he would take.

Q. And whatever may have been your desire for your counsel to influence the instructions given to him by the Secretary of State, you never realized from that anything in favor of the enterprise, did you?—A. Oh, yes; I realized a great deal.

Q. Did you realize from the instructions of the Secretary of State, under the influences which you brought to bear upon him, or sought to bring upon him, the advantages that you expected?—A. In very large measure.

Q. Then his instructions to General Hurlbut were such as you desired?—A. For the most part they were exactly what I desired.

Q. And did that continue until you realized the advantage you expected?—A. That continued continuously. We were realizing from month to month. It did not continue until a final consummation which would place us in possession of our property. The history of events was not such as rendered that consummation possible up to the time that the Secretary of State left the department.

Q. Up to the time that he left the department, did you understand that his influences and instructions were in favor of the development of your company under the influences you brought to bear upon him?—A. I understood them to be entirely cordial and favorable, and helpfully so, so far as the intent of the Secretary of State was concerned, and in effect objectively so, as far as results were concerned, until I received the letter of December 3.

Q. And then you became aware, also, of the fact that Mr. Hurlbut's influences upon the interests of the Peruvian Company, at Lima, were not in the line of your desires and to your advantage?—A. I became aware of that as soon as I received the letter of General Hurlbut which brought me to Washington, the letter dated, I think, September 12; the letter which answered mine of August 19. From that time on, I understood constantly from General Hurlbut's own letters that he certainly was not helping us any.

Q. But you, on the whole, failed both as to General Hurlbut and as to the Secretary of State in obtaining any influences whatever that led to the advantage of the Peruvian Company?—A. Oh, no, sir.

Q. You did not fail?—A. No, sir; I think, upon summarizing the whole of the case, that I realized all or substantially all that I could have expected to realize, General Hurlbut being just the man he was. So far as the Secretary of State was concerned, I think he did everything for me that I really wanted done in any manner or form up to, say, the 17th of November, when he wrote General Hurlbut that he need not bother about the Cochet claim any more.

Q. On the whole, both as to his instructions to General Hurlbut and his communication to you of the 3d of December, he became apparently displeased with your whole conduct as towards General Hurlbut and as towards the Department of State?—A. His letters speak for themselves.

Q. The object of the inquiry is to show that whatever may have been your attempts,

both upon General Hurlbut and by such resources as you could bring to bear to influence the Department of State, that you essentially failed in bringing influences to bear that should develop and perfect your interests and the interests of your clients, the Peruvian Company; is that substantially true?—A. Not by any manner of means; quite the reverse; almost totally the reverse.

Q. Then did you derive from General Hurlbut the advantages that you sought to obtain when you wrote him that letter of July, and equivocally offered him stock in your company upon his own terms?—A. My impression is that that letter resulted, first, in holding him in an entirely amicable state of mind toward our claim until he received my letter of August 19. Second, that it resulted in holding him in a sort of neutral position in regard to the claim from that time until he decided to send my correspondence to the Secretary of State and drop the matter. I think that so much was accomplished by the letter of June 2d, and so far forth it accomplished its purpose.

Q. Did he not say to you in his letters that he returned your correspondence for the reason that it was disagreeable to him to send it back to the Secretary of State, because he regarded it as an improper correspondence, and did not the Secretary of State, on the 3d of December, write to you substantially to the same effect, that he regarded the whole transaction as an improper one as towards the minister and as towards the Secretary?—A. The letter of the Secretary of State must speak for itself. There was a remark in one of General Hurlbut's letters, I think, that the tone of my correspondence was not agreeable to him. I do not think that General Hurlbut stated in any of his letters that he regarded the correspondence as improper; if he did, it has escaped my attention. He certainly had been as important a party to it as I, and if he had made that suggestion it would have reflected as much upon him as upon me.

Mr. LORD. I am through with the witness.

Mr. WILSON. The questions I shall ask will be of a mere recapitulatory character. [To the witness.] When did you first become connected with this Peruvian Company?—A. I first became connected with the claim in the latter part of March, or early in April, 1881, as attorney.

Q. You have frequently spoken of yourself as counsel, and then you have also frequently spoken of your counsel. That constrains me to ask you in what connection were you related to that company?—A. I was first employed by individuals as an attorney in the ordinary course of business. The case came to me as any other case would come to a practicing attorney. I was requested, first of all, to make a general examination of the case and give an opinion as to whether there could probably be anything done with it in a practical way, and as I had formerly been a business man and banker, I understood that I was retained in the case as much with reference to my former experience in money matters as a banker, as for anything else. I was then asked first, as a lawyer, what I thought about the case as a case, and, secondly, whether I thought anything practical could be made out of it. My general relation as attorney for these gentlemen continued until the organization of the Peruvian Company. When that was organized I was asked to take the presidency of the company, temporarily only, and I only hold it temporarily, and I am continued as attorney of the company. I am, perhaps, the principal attorney of the company, acting as a lawyer in that capacity at the same time that I hold the office of president. Now as to the other counsel, I advised my clients at an early date, that under certain possibilities something might be made out of this, and if anything was made a great deal could be made out of it; and therefore I advised that I be authorized to retain associate counsel, and one after another such associate counsel were retained, and when the Peruvian Company was organized they were recognized as counsel of the company.

Q. When did the Peruvian Company organize?—A. On the 1st of October, 1881.

Q. Did you procure this Georgia charter, or who procured that?—A. It was procured through my correspondence.

Q. Was the organization under that charter?—A. Yes, sir.

Q. Do you remember the names of the gentlemen named as corporators?—A. I only remember one, the senior corporator, Mr. Duff Green. There is a long list of them, strangers to me mostly, and I do not remember their names.

Q. But the prospectus has given those names to the public?

The WITNESS. You mean the corporators under the original grant?

Mr. WILSON. No; I mean under the Georgia charter.

A. The corporators were named in the charter. The prospectus contains only a part of the text of the charter. It is printed in the general laws of Georgia. We have not printed it for general circulation, but we have some printed copies in the office for use.

Q. These clients of yours were American citizens?—A. Yes, sir.

Q. And you soon saw that you had to have your negotiations with Peru through the State Department?—A. We saw at the outset that we must have some relations through the State Department.

Q. By referring to the letter of Mr. Blaine of August 4, 1881, printed on page 124 of the testimony before this committee, I see that in his letter to General Hurlbut he instructs him, among other things, that as American holders of the claim or their

attorneys will be on the ground, he will no doubt be placed in possession of all the facts. I call your attention to that paragraph in his letter instructing Minister Hurlbut generally that he must inquire as to "whether any American citizen or association of citizens has acquired an interest in the claim in a manner entitling him or them to the good offices of this government in making any representation to Peru. As the American holders of the claim or their attorneys will be on the ground, you will no doubt be placed in possession of all the facts." I desire to know whether you communicated to the Secretary of State here, or to General Hurlbut in Peru, the names of these American holders?—A. No, sir; I do not think that any name of an owner interested in the Cochet or Landreau claim was ever mentioned to the Secretary of State or sent to General Hurlbut.

Q. Did you lay before the Secretary of State or cause to be laid before General Hurlbut the evidence of title?—A. Only such evidence as has been printed for the use of the committee, and is now before it.

Q. Nothing more than we have here?—A. No, sir.

Q. Are any of the gentlemen who were American holders of this claim, as implied by the resolution of instructions to this committee, holding official position now, or did they at the time?—A. If the examiner please, what official position? None of them were ministers plenipotentiary; that is the designation in the resolution, as I understand it.

Q. Or members of Congress?—A. No member of the House of Representatives.

Q. And no other government official?—A. No other officer of the United States Government except, as I have already testified, the collector of the port of New York, who, as attorney, received a fee.

By Mr. BLOUNT:

Q. Let me see if I understood that last answer correctly. Do you mean by this answer to exclude the idea that any Senator was a holder of any of this stock?—A. No; I mean simply not to say anything with regard to Senators.

Mr. BLOUNT. That is what I supposed.

The WITNESS. I think I have, in endeavoring to follow the questions, misapprehended the question of the examiner. Was the question as to ownership in the claim?

Mr. BLOUNT. Yes.

The WITNESS. No minister plenipotentiary and no member of the House of Representatives has at any time been an owner in this claim to my knowledge; that is the answer.

By Mr. WILSON:

Q. When were you employed by the owners of this claim?—A. Late in March, or early in April, 1881.

Q. When did you first have any connection, personal or by letter, with the Secretary of State, or Minister Hurlbut; when was your first interview?—A. The first interview occurred with General Hurlbut on the 30th of May.

Q. That was the interview at New York?—A. Yes, sir.

Q. I think you said you had received a letter or dispatch asking you to meet him?—A. Yes, sir.

Q. Was that a letter or dispatch?—A. That was a telegram.

Q. Have you filed that telegram here?—A. I have not.

Q. Have you got it?—A. I could not find it when I made search.

Q. Do you remember the date of it?—A. My recollection in regard to it is precisely this: that it was dated on the 28th of May, which was Saturday morning; that I received it about eleven o'clock in the forenoon, and that I noticed it was dated the same day. That is the way in which it lies in my memory.

Q. Mr. Rice has pointed out to me, on page 28 of these proceedings, the following, which is included in your testimony:

"WASHINGTON, D. C., May 28, 1881.

"JACOB R. SHIPHERD,

"No. 10 Spruce street, New York:

"I will be at the Fifth Avenue Hotel Sunday and Monday. State when and where an interview can be had.

"S. A. HURLBUT."

The WITNESS. I gave that from memory, as it will be found by looking at the record.

Q. I am requested to ask you whether any Senator owned stock in this company?—A. I beg to be excused from answering that.

Q. I want to put the question in such a shape that the committee can determine whether they will insist upon it or not. Was any Senator the holder of the stock before the company was organized?—A. Not to my knowledge.

Q. Have you any knowledge of any minister plenipotentiary of the United States,

or any other government official, being the owner of or interested in this property, or having any other connection with it than what you have stated?—A. As to the ownership of this claim, the only answer that I am prepared to give is this: that no minister plenipotentiary and no member of the House of Representatives is, or at any time has been, to my knowledge, directly or indirectly, interested in the property of the Peruvian Company.

Q. Let me ask you this: How could you have expected, or how could your clients have expected, that the Secretary of State would give definite instructions to Mr. Hurlbut, as our minister to Peru, without first giving him the evidences of a *prima facie* validity of your title?—A. Those evidences were all placed in the hands of General Hurlbut on the 30th of May, at the city of New York, and the fact that they were so placed in his hands was mentioned by me to the Secretary of State at our first interview, and I understood a remark or an intimation of his in response to a remark of mine, that he was aware of that fact and had been aware of it before General Hurlbut sailed.

Q. Did you learn from Secretary Blaine, directly or indirectly, that he had ever examined the evidences you had placed in General Hurlbut's hands?—A. I did learn from Secretary Blaine directly that the papers sent to the President had been referred to his department, and had been cognized by him personally, and that the duplicate set of papers for General Hurlbut, which I had sent to the Secretary of State, say, the 25th of May, had also been received by the Secretary of State. What was said, I think, only amounted, in a general way, to an assurance that from those papers the Secretary had derived such information in regard to the case as prepared him to discuss it with me. He went on in the discussion with a manner which led me to suppose at every step that he had been all through the papers, and had formed at least a general opinion in regard to the whole thing. The discussion was on that basis entirely.

Q. I would like to ask whether among the papers you refer to, the conveyance from Cochet's son to your company was included, or a copy of it?—A. Yes, sir; it is printed here with the other papers before the committee, because it was filed in the State Department.

Q. What page is it on?—A. It is on page 672 of this large volume.

Q. Is a copy of that paper filed in the State Department?—A. Yes, sir. I think this accompanied the letters of May 20th and 21st to the President.

Q. Have you, in examining this case and formulating your opinion as to it, and in passing upon the validity of this conveyance, ascertained the consideration paid this young man for this claim?—A. I beg to be excused from answering.

Q. You will very readily observe, as a good lawyer, that the question of consideration might arise—the adequacy of it?—A. Yes, sir; it might be very vital to the Peruvian Company.

Q. And in that view of the case, I wanted to ask you what you understood to have been paid for that claim?—A. I understood that the consideration was, in legal effect, sufficient in every respect.

Q. Was it \$20,000?—A. I beg the examiner's indulgence.

Q. Was it as much as \$20,000? You have estimated it as worth a good many millions.—A. Well, it may become worth a great many millions when everything is done to it that can be done. At the time of its purchase from this son, it was, I suppose, worth very little. I suppose the committee will at once see that a claim bought as that was, and at that time, was not so very valuable. It was not even known whether the father was or not living. The gentlemen who purchased it then took an infinity of chances. I only suggest these points generally, without going into a detailed statement of them.

By Mr. RICE:

Q. I have noticed in the newspapers that Gelacio Cochet, the son of Alexander Cochet, is in New York. Do you know where he is?—A. I never have heard of his being in New York. I never have heard of his being out of Lima.

By Mr. WILSON:

Q. When did you first say that you had any interview with any government official on this subject?—A. On the 30th of May, with General Hurlbut.

Q. After your letters were addressed to the President?—A. Yes, sir.

Q. And after your first letter to Secretary Blaine?—A. Yes, sir; after I had written to Mr. Blaine, sending him papers for General Hurlbut, to be delivered in his official discretion.

Q. I am requested further to ask you when it was that the first written communication between you and any government official took place?—A. The first communication was to the President in the latter part of April; I think April 29.

Q. Mr. Belmont desires to know when you had your first verbal intercourse with any government official?—A. The first verbal intercourse I had with any representative of the government was on the 30th of May, with General Hurlbut.

Q. You say you have not published your prospectus ; it has never been given to the public yet ?—A. We have not given it out to the public ; it has been printed.

Mr. WILSON. Mr. Chairman, this witness has been upon the stand so long, and the examination has been so thorough and exhaustive, that, having gotten information upon the few subjects addressed to my mind and upon which I have questioned him (for I have not heard all of the former examination), I do not desire to prolong it any further.

The CHAIRMAN. I think, then, that we will hold a businesssession of the committee on Monday, at which time there will be no public examination, but the order of the further proceedings may be taken up and considered in connection with other business. We will adjourn the hearing from to-day until half past ten on Tuesday, at which time it is expected that the examination of Mr. Shipherd, for the present, will be completed. But on Monday the committee will determine what its future course will be.

Mr. RICE. Has the witness given to the chairman yet the names of those parties in New York who were spoken of as having information in regard to General Hurlbut's matters at Lima?

The WITNESS. I have not yet been asked for them. I have been waiting the pleasure of the committee.

The CHAIRMAN. Mr. Shipherd stated to me that he was ready to furnish them, and if he will please do so this morning, I would like to have him.

The WITNESS. If the committee please, then I wish to say that my offer to furnish the names is solely with reference to their being, in the discretion of the committee of course, summoned as witnesses, and that the names are not furnished to be included in any report to be made by the committee to the House, or otherwise to be made public.

The CHAIRMAN. The committee understand that. They simply want the names so as to be able to take up the matter for consideration at their session on Monday.

The WITNESS. For that purpose I will furnish them.

The committee then adjourned.

WASHINGTON, D. C., *April 18, 1882.*

The committee met pursuant to adjournment.

The examination of JACOB R. SHIPHERD was resumed.

The CHAIRMAN. I have received a telegram from Mr. W. H. Hurlbert this morning, which reads as follows:

NEW YORK, *April 18, 1882.*

Hon. C. G. WILLIAMS,

House of Representatives, Washington, D. C.:

I will be there with pleasure, as requested.

W. H. HURLBERT.

The time set for Mr. Hurlbert's examination is half past ten o'clock Thursday morning, at which time I understand, from his telegram, he will be here. If Mr. Deuster is ready to examine the witness he may proceed.

By Mr. DEUSTER:

Q. Who is the American merchant formerly residing at Lima who first purchased the Cochet claim?—A. I decline to state.

Q. Was it Mr. Peter Hevener?—A. I decline to state.

Q. Was it purchased of Cochet's legitimate heir and representative?—A. I decline to state.

Q. What sum was paid for it?—A. I decline to state.

Q. Where is he at present residing ; or, if dead, where did he live at the time of his death?

The WITNESS. Who?

Mr. DEUSTER. This legitimate heir of Cochet's.

A. I have no knowledge except by hearsay.

Q. To whom was the claim subsequently transferred or sold?—A. I decline to state.

Q. Who are the present claimants besides Mr. Franklin Stewart, Mr. Peter Hevener, and yourself?—A. I decline to enter into any particulars of that sort.

Q. In your letter to General Hurlbut of June 2, 1882, you mention the following gentlemen and firms as those with whom you were, or were soon to be, in confidential negotiations in the premises. Are any of these gentlemen stockholders of your company?—A. I decline to state.

Q. Is Mr. E. D. Morgan a stockholder, or is he connected with you in this matter ?
—A. I decline to state.

Q. Do you know Mr. William E. Dodge ?—A. I decline to state.

Q. Is Mr. Hugh McCulloch a stockholder ?—A. I decline to state.

Q. Is Mr. Norvin Green a stockholder ?—A. I decline to state.

Q. Is Mr. W. K. Garrison a stockholder ?—A. I decline to state.

Q. Is Mr. August Belmont a stockholder ?—A. I decline to state.

Q. Is Mr. William H. Vanderbilt a stockholder ?—A. I decline to state.

Q. Do you decline to state whether any one of these gentlemen that were named in your list to Minister Hurlbut were really stockholders, or had any interest in your company ?—A. I have not been asked that.

Q. Well, I ask you that question now, whether any one in that list which you give in your letter which I have just cited, and the date of which I have named, are stockholders in your company ?—A. There was no company in existence at that time. I have been answering the questions *seriatim*, upon the understanding of them that the questions in each instance asked whether either of these parties now were stockholders; but I now understand the question to go back and ask whether they were then. In answer to that last understanding I say that at that time there was no company or stockholders.

Q. I mean your present company; is any one of these gentlemen a stockholder ?—A. That I decline to answer.

Q. Did you ever see Mr. Whitelaw Reid or have any conversation with him on that subject ?—A. I state with pleasure that Mr. Reid and myself have been acquaintances and correspondents, and I suppose friends, for over seventeen years.

Q. So what is stated in the Tribune of his "not being aware that he had ever seen Mr. Shipherd," you would consider not true ?—A. I am not responsible for the "awareness" of Mr. Reid; I only know that for seventeen years we have been acquaintances and, as I supposed, friends—and certainly correspondents. I have a file of his letters.

Q. In that list you mention several newspaper men, among others, besides Mr. Whitelaw Reid, Mr. Joseph Medill; is he a stockholder in your company ?—A. I decline to state.

Q. In your letter of August 19, 1881, to Mr. Hurlbut you say, "among the present active attorneys of the Cochet interests are Ex-Secretary Boutwell, Ex-Senator Cragin, of New Hampshire, Senator Blair, of New Hampshire, and Hon. William E. Chandler." Are any of these gentlemen stockholders of the Peruvian Company at the present time ?—A. I decline to state.

Q. Did any of them receive any money consideration or other remuneration ?—A. I decline to state.

Q. In your letter to Minister Hurlbut of September 28, 1881, you say, "the nearest friends of the new President are or will be among our stockholders, and our original plan to offer General Grant himself a prominent seat in the direction will probably be carried out." Will you state whom you had reference to, and give the names of those of your stockholders who are the marked friends of the new President ?—A. I will not.

Q. In your letter to Minister Kilpatrick of October 19, 1881, you say: "This company is now fully organized," and "that it includes the best legal, diplomatic, and money resources of the United States; that the title upon which it relies is approved unanimously by a large staff of eminent counsel, and that it has unqualified assurance of ample governmental backing." Please state who the board of directors of the Peruvian Company are.—A. I beg to be excused.

Q. Would you object to giving the names of the officers and directors of any ordinary banking or other corporation, organized for honest business purposes, of which you were a member or an officer ?—A. I should, under all circumstances, refuse to give them except to persons who had a right to ask for them, and under circumstances in which they had the right to make the request.

Q. Suppose you were a banker, and I were to call on you and ask you for a list of the stockholders of your bank, would you refuse to give me the names of the stockholders, or the directors at least ?—A. Yes, sir, unless you had some right to ask for them.

Q. If I intended to transact some business with your bank, or if you wanted to interest me in your business, I mean, would you refuse to give me such information ?—A. I would say this, in reply to that question: I have been a banker and the president of a bank, and the custodian of stockholders in a bank, and I should just as soon be guilty of disclosing my wife's letters to me before our marriage as to divulge, on the mere request of an individual, the list of stockholders in a bank, and in a somewhat extended experience with bankers I have understood that to be the rule and the habit. The suggestion that there should be an exposure upon request, always, of anything that is not dishonest or improper, is a suggestion which I do not recognize as current among business men.

Q. Who are the the gentlemen or firms designated in your letter as "the best legal, diplomatic, and money resources of the United States ?"—A. I decline to state.

Q. Who are the "large staff of eminent counsel" referred to as "approving unanimously" the title upon which the company relies?—A. I decline to state.

Q. By whom was the "unqualified assurance of ample governmental backing," given to your company?—A. I decline to state, unless it is somehow connected with the allegations concerning which the committee are inquiring. I have already stated all that I understand to bear on that point.

Q. I only want to know whether you are willing to answer my questions, "yes" or "no," or decline to answer them; I have no other reason.—A. As heretofore stated, and decided by the committee, when I make an answer I have the right to qualify it. I do not decline to answer the question as a question, merely, but, in this connection, understanding as I do that the question is merely asked as the other questions in this connection are, apparently for the purpose of drawing out information without any definite relation to the allegation into which the committee are instructed to inquire—I say with that understanding I decline to answer it in this connection.

Q. Has your company a direct or indirect interest in the claim of J. C. Landreau?—A. I decline to state.

Q. Are the Cochet and Landreau claims owned by the same claimants now?—A. I decline to state.

Q. Were you acquainted with, or ever made aware of, the nature of the instructions given by Mr. Blaine to General Hurlbut in department letter No. 7, dated August 4, 1881, in which Mr. Blaine says: "The two claims for which special consideration and active intervention have been asked are those known as the Cochet claim and the Landreau claim. In reference to the Cochet claim, there has been no information laid before the department of a sufficiently definite character to warrant a specific instruction." And further on he says, "You will take no step committing your government to the use of its good offices without first reporting in full to the department for well considered and definite instruction." Did you have any knowledge of that instruction?—A. As I have already stated, Secretary Blaine read the dispatch of that date, which, according to my recollection, is that dispatch to me at the State Department on or about the 14th October, 1881.

Q. What instructions had you reference to when you said in your letter to General Hurlbut of September 28, 1881, "Of course the instructions you have already received will continue in force until specifically modified, and it shall be our care to prevent such modification"?—A. My present impression is that my reference was to the dispatches concerning which I had been told by Senator Blair that they had been sent, and concerning the character of which he had given me information, which dispatches I understood to have been two; one sent by cable and the other by mail, on or about the second day of August, 1871.

Q. Are any of the gentlemen mentioned heretofore connected with, or interested in, the Landreau claim, to your knowledge?—A. I decline to state.

Q. Have you ever had any conversation or communication with Mr. Blaine since his letter of December 3, 1881?—A. I have not had the pleasure of meeting Mr. Blaine since that date, and I am not aware that any correspondence has passed between us.

Q. Did you ever have any communication with Mr. Trescot?—A. I did.

Q. Was it about the Peruvian Company?—A. It was.

Q. Will you be kind enough to state that conversation or communication with him.—A. I will with pleasure. I think it was on the 18th of November, the day in which I had an interview with President Authur. Somewhere about noon I called at the State Department and looked into the office of the Third Assistant Secretary of State, not upon this business, but with the intent to ask him some question or other that concerned me personally; merely a casual call. I there met Mr. Trescot. It was the first time I had ever seen him. Mr. Blaine introduced him to me, and we three chatted together I suppose for three-quarters of an hour, Mr. Walker Blaine introducing the conversation and leading it throughout. The conversation made no very deep impression on my mind, because I understood it to be in every respect informal and unofficial; but Mr. Walker Blaine introduced the conversation by asking me some such questions as these: "Well, how is the Peruvian Company; how are you prospering; what are you going to do next?"—a series of questions of that sort. My recollection is that the conversation very soon drifted into a discussion of the special relation of the Government of Chili to the diplomatic situation, and some suggestions and comments were exchanged between us bearing upon the attitude and the intentions of the Government of Chili, and I think that that broad discussion occupied a large part of the time that was spent. As I say, the conversation left no particular impression on my mind, for the reason that I considered it as merely casual and entirely unofficial, and we certainly did not undertake in any serious way to discuss the merits of any particular policy. It was such a chat as I might have had with any gentleman anywhere. That is the only occasion on which I ever met Mr. Trescot.

Q. Do you know the reason why Mr. Walker Blaine, Third Assistant Secretary of State, was sent to Peru and Chili?—A. I never had any official information on that

subject; all that I know has been picked up from the guesses of gentlemen who did not pretend to know.

Mr. DEUSTER. Mr. Chairman, these are all the questions that I desire to ask at present.

The CHAIRMAN. If there is no other member of the committee who wishes to examine the witness, I desire to draw his attention to a letter found on page 80 of the testimony, addressed to the Hon. Walker Blaine, Third Assistant Secretary of State, and dated August 9, 1881. (To the witness:) I wish you to state briefly and succinctly what real purposes you had in view in sending that letter.

A. I will do so with great pleasure; but, if I do so, I must speak with a frankness which, as I have before intimated, I would not choose to use. My interview with the Secretary of State on the 25th and 26th of July, left among other impressions upon my mind this impression, that the Secretary of State was not a lawyer; that he had not that mind or quality of mind, or that habit of mind, which at the bar we recognize as pre-eminently judicial. At the same time I observed that he was disposed to discuss the purely legal aspects of this claim. He did not press them, but he showed a disposition to discuss them. I recognized the fact that, so far as our interests were concerned, he sat substantially as a judge. We had not submitted the claim to him yet, but the time might come when his opinion on this claim might be of supreme importance to us, and the drift of events was such as to urge us, perhaps, rapidly towards such a time. I had the same feeling of apprehension that I should have had if I had been before a court of adjudication, on the bench of which Mr. Blaine sat. I said to myself, "Now, this is likely to be disposed of upon purely legal issues, and it is very clear to me that this gentleman, sitting as a judge, has not the culture which fits him to act judicially upon the claim. Mr. Walker Blaine had been mentioned to me by personal friends of mine who were attorneys, and who were, as I understood, intimate friends of his, as being, although a young lawyer, a very clear-headed and well-trained lawyer, able to look at questions, if not from the judicial, at least from the legal standpoint. It was further suggested to me that the relations between the Secretary and his son were such that a suggestion made, in such a connection as this, by the son, would receive special consideration from the father. The son was there as Third Assistant Secretary of State, and, pursuing the legal figure, as associate justice on the bench, and it did not occur to me that there was any impropriety whatever in calling his attention to the matter and interesting him, if I could, in examining the claim with me from an attorney's standpoint, with a view of his making such suggestions as might be entirely proper, I recognizing him as associated with his father and making suggestions to his father which might have weight, which they would not have if made directly by me. That is frankly the beginning, end, and uttermost of what lay in my mind.

Q. I desire to call your attention to the following passage of the letter referred to. "I seek aid on every side as instinctively as one panting seeks air. Of high and generous aid I cannot find too much.

"I do not seek aid to accomplish a determined result; I can see my way straight as the arrow flies to that. But infinitely more important than the result, to my mind, is the method—the long and complex series of methods that must be chosen out of many alternatives. Here I want help—the help of wise counsel; above all else, the wise counsel that will hold me back from mistakes.

"My conferences with the Secretary of State gave me a large satisfaction. The broad and well-stored mind, the high and aspiring ideals, the instant and comprehensive grasp of all themes with equal and familiar ease refreshed me as so many wines, and I came away more than content.

"If you will read my note to the Secretary of July 28, you will see how perfectly the despatches sent (as I am told) on the 2d of August covered all the wish I expressed.

"If Mr. Elmore (who, I am told, will soon deliver to the department his credentials as minister) has a wise instinct, or is wisely advised, he will come to me at once, and negotiations will, I hope, result to the content of all parties who are content with equal justice and the 'greatest good to the greatest number.'

"In such case my original plan will be realized, and neither the department nor the President will be asked to take any further step in the premises as to either claim. So far from having taken any interest in this claim in special reliance, or with a leading intent to lean upon governmental aid, every plan, choice, and expectation lay in the opposite direction, and if Mr. Elmore had been early wise not even what the department has already done would have been necessary.

"All men, however, are not born wise, and the further possible need of executive co-operation we are in prudence bound to conditionally anticipate and to provide for.

"My conferences with the Secretary made me conscious of the relative disadvantage an attorney may be subject to in discussions of state questions with a statesman. And this consciousness turns me to you, who, as at once an attorney and a statesman, may

interpret for me my meaning to the Secretary in terms he will not mistake, and, again, may make plain to me in attorney's talk what I do not directly comprehend."

Q. Had you learned at that time that Walker Blaine was an eminent attorney?

A. I have stated that I had learned, if the chairman please, that he was a bright and clear-minded and, for a young lawyer, a well-trained attorney.

Q. Can you name any important case in the trial of which he was ever engaged?

A. O, no, sir; I stated the source of my knowledge.

Q. Did you know at that time, either from your own knowledge, or by information or hearsay, of any case that he ever argued in any court?—A. No, sir.

Q. Did you ever learn of his arguing a case in the Supreme Court of the United States?—A. No, sir.

Q. What fact did you found your ideas of his eminence as an attorney upon; what particular fact can you state?—A. If the chairman will scan the text closely he will see that, however generously I may have spoken of the Secretary of State, I have not implied that the Third Assistant Secretary of State was regarded by me as an eminent attorney. I merely recognize him as an attorney professionally, and, while he held such high office, a statesman.

Q. Did you state in this letter that you regarded the Secretary as one familiar with questions of statesmanship?—A. I stated in that letter very precisely and truthfully the impressions made upon my mind.

Q. If you will please answer the question I will be obliged. Did you state that, in substance, you regarded him as familiar with questions of statesmanship?—A. I should have to examine the text to see about that.

Q. I mean that, in substance; did you regard him as an eminent statesman?—A. My impression in regard to the Secretary of State as a statesman—

Q. If you will please answer directly I will be obliged.—A. If the chairman will indulge me I will answer directly. My impression in regard to the Secretary of State as a statesman at that time was this, that he was, as I say here, a man of broad and well-stored mind, of high and aspiring ideals, with an instant and comprehensive grasp of all themes (that is, generally), with equal and familiar ease. I regarded him as a man having been so long in political and public life that he must necessarily be, in a high and true sense, a statesman, and a very able statesmen.

Q. Well, now, candidly, which did you regard the most capable of instructing the other on questions of statesmanship, the father the son, or the son the father?—A. If the chairman please, there is no suggestion of that issue in this letter to my knowledge.

Q. Let me see. You say in this letter, "My conferences with the Secretary made me conscious of the relative disadvantage an attorney may be subject to in discussions of state questions with a statesman. And this consciousness turned me to you," &c. Now, how did you judge that the son was more capable of instructing the father in questions of statesmanship than the father was the son? That is the question I ask you.—A. That idea, if the chairman please, never occurred to my mind, and is now first suggested by the chairman. If he will return to the text I think I will show him how the text represents an entirely different idea. I was conscious of the disadvantage in which I stood as a mere attorney in attempting to discuss with a statesman, that is, with the Secretary of State, questions of state.

Q. If you will allow me to interrupt you; you desired the son as an attorney to discuss them. Now, what advantage had he over you in that respect?—A. If the chairman will indulge me I think I will satisfy him.

Q. If the witness will indulge me he will be kind enough to answer.—A. I have not been able to complete my answer.

Q. I desire in that connection, if the witness please, to know how the son, as an attorney, had an advantage over the witness in instructing the Secretary on questions of statesmanship?—A. I never proposed to invite the son to instruct his father in statesmanship, directly or indirectly.

Q. But how did he have any advantage over the witness in that respect?—A. I only sought the co-operation of the son to present to the Secretary of State the attorney's view which I found myself at a disadvantage, or thought myself at a disadvantage, in presenting.

Q. But had you not already prepared a brief of the legal questions involved?—A. No, sir. I had suggested in one of my letters that I was going to do so.

Q. Had you not proposed to do so?—A. I had such a matter in my mind, but I hesitated to do it, and, instead of doing it, it occurred to me to write to the son and see if I could not get the son to translate—now I have the word that will show exactly what I mean—to translate it to him. I used the son precisely as, in a foreign country, I would have sought the assistance of a translator, and in no other sense whatever. The son had been admitted as an attorney, and friends of mine who knew him well said to me that he was a very bright and capable lawyer.

Q. Then you simply applied to him as an attorney only?—A. Not exactly as an attorney; that is, not to perform an attorney's service for me; that was not it.

Q. Well, what was it?—A. I applied to him because I understood that his mind had been trained as a lawyer's mind is trained, and I thought I would be able to talk to him, as I phrase it, in "attorney's talk," and he would translate that to his father in such a way that his father would be sure to get the idea I had right.

Q. Then you sought his assistance only because of his skill as an attorney?—A. I sought him only because of the training of his mind.

Q. You had no other purpose in view but to secure that skill which he possessed as an attorney, in explaining legal propositions to his father?—A. Nothing else, whatever; that was it precisely.

Q. You did not have in mind at all the relations which existed between the son and father; the paternal relations?—A. I had in my mind every relation subsisting between the father and son, between the Secretary of State and his junior associate—every relation which would aid me in producing upon the Secretary of State's mind ultimately such a statement of this case as would do it justice.

Q. But you did not seek him because, through the paternal or filial relations, you thought he would have an advantage over any other attorney that you might employ?—A. I wish to answer that with more directness and more precision because there is nothing tender here and any amount of probing will only gratify me. I was not unaware of the fact that the relation subsisting was both official and personal. I wished to avail myself of it in all its totality. But I addressed him primarily, and I may say so far as all the controlling motives are concerned, solely because he was at the same time an associate with the chief justice, (as the matter lay in my mind) on the same bench, and that he had a training which would enable him to understand me absolutely; but I thought the chief justice, continuing that characterization of it, lacked that training, and I doubted whether I could make myself properly understood to him.

Q. Now, one question right there. Would you regard it as exactly proper to retain an associate justice on the bench to act as an attorney to instruct the chief justice?—

A. I cannot understand why that question should be asked, because there is no suggestion or intimation that I ever suggested or dreamed of retaining the Third Assistant Secretary of State.

Q. You desired to secure his services?—A. His judicial services.

Q. Then it was not as an attorney that you desired his services?—A. I only addressed him because he was all he was: First of all, an Assistant Secretary; second, an attorney who could understand my talk; and third, I counted that I was fortunate that there was also a personal relation. I felt sure that if I did make him understand, he would certainly make his father understand.

Q. Had you experienced any difficulty in having the Secretary understand what you said to him at these various interviews?—A. I experienced a very large difficulty in making the Secretary comprehend legal distinctions. The fact is, I went away with the consciousness that he never would be able to comprehend legal distinctions.

Q. What particular instance can you give where he failed to comprehend what you said to him in the way of a legal distinction?—A. I could not undertake to make that plain in a general statement. I can suggest a single representative instance, observing particularly that it is only one of a dozen, at least, that occurred during the interview. The Secretary made a suggestion in regard to the possible non-assignability of a chose in action. I said, "Mr. Secretary, but suppose Peru admits our claim?" "Oh, well," he says, "then it will be none of our business." "Well," I said, "you will not dismiss this claim at this stage, then, because we count on the admission of Peru, but we have not reached the point where we can test her yet. Secondly, Mr. Secretary, suppose it turns out that we bought property—not a chose, but property—guano?" "Well," he said, "that, I suppose would make a different case." And almost instantly he says, "I don't care; it is a claim anyway. It don't make any difference whether you bought property or bought a claim to recover money; it is a claim anyway." And he held to that as pertinaciously as possible through the interview. And I said to myself, "Well, it will be a waste of time to talk any further on that point."

Q. Right there—do you think young Walker Blaine, as an attorney, could have explained that matter better to the Secretary than you, as an attorney, could?—A. I was perhaps so incredibly modest as to suppose that might be true [laughter].

Q. We accept this instance of modesty. Speaking of Senator Blair, you say: "Senator Blair has kindly aided me, and his aid has been great; so great as to deepen my desire and to heighten my expectation for more. His intimate acquaintance with the Secretary has enabled him to interpret to me what I could not alone understand, and I am sure that you could supplement that aid with help that you alone are able to render." Will you be kind enough to state to the committee what it was that Senator Blair interpreted to you?—A. I should be very glad to do that.

Q. We certainly would be glad to have you.—A. Senator Blair made statements in that connection to me as counsel—that is, they were such statements, I should suppose, that only counsel would make (although the committee is aware of what his real position was at the time)—which threw a flood of light on the workings of the Secretary's

mind. Those statements were suggestions with regard to the habits of the Secretary's mind as a mind. They were the result of such observation, as I take it, as would only be gained by long and intimate acquaintance between the Senator and the Secretary, and I think that such a communication is one which (although I say frankly I would be very glad to make it) I must consider as of the highest privilege.

Q. Would you be kind enough to specify what he said?—A. I could not enter upon it, I think, without indelicacy. It was a statement, I say, a frank unreserved statement, such as could scarcely be made with propriety except in a privileged way. It consisted of Senator Blair's observations and opinions with regard to the habits and characteristics of the Secretary's mind. It cannot be evidence before this committee for any purpose.

Q. Considering Senator Blair's relation to the Secretary, and his eminence as an attorney, why could not he explain these things to the Secretary as well as Walker Blaine could?—A. I think the answer to that is suggested in the very text that the chairman has read. I thought the Assistant Secretary could supplement what Senator Blair had done.

Q. Have you any objection to specifying just what you wanted Walker Blaine to interpret to his father, or what you wanted him to interpret from his father to you? Give us an instance of something that you wanted interpreted between you that you could not understand without him.—A. I can only say generally (that is, I disclose the whole truth when I do say generally), that I had, at that time, no special topic in my mind, but I had generally in mind the brief which I was then expecting to prepare. My idea was to prepare a brief from the lawyer's standpoint, just as I would prepare it for an experienced judge, and then to take that to the Assistant Secretary as something more than an *amicus curiæ*, as an associate upon the bench, and ask him to go through it and see whether the case so put would, in his judgment, do justice to my clients, if submitted to the Secretary of State.

Q. Why could not Senator Blair do that just as well?—A. Because I thought that the Assistant Secretary of State, as son of his father, would understand the workings of his father's mind better than the Senator, as he stood nearer than the Senator and would be better able to supplement such suggestions as the Senator might make.

Q. What peculiar obliquity was there in the Secretary's mind that you wished to overcome?—A. It was not obliquity, but a lack of legal culture.

Q. A kind of legal stupidity?—A. Not at all.

Q. What was it?—A. It was a lack of that special culture in dealing with questions of law which is acquired, as I understand it, only in legal study as such. I understood the Secretary to be deficient precisely as he might be deficient in the knowledge of German, of Sanscrit, of Spanish, or any other language that he might not have happened to study.

By Mr. BELMONT:

Q. Could not the Secretary of State have consulted the Attorney-General upon this claim?—A. I should certainly suppose he might.

Q. You never heard that he did?—A. There was never any suggestion of that sort; but if the chairman will indulge me, I would like to complete the answer to Mr. Belmont's question.

The CHAIRMAN. Certainly you may do so.

The WITNESS. One of the special reasons that led me to seek the Assistant Secretary was that tone in the Secretary's conference throughout which led me to believe that he would not seek any legal advice upon this subject whatever. I understood most emphatically from the tone and drift of his talk, from beginning to end, that he alone proposed to dispose of this whole matter, and I said to myself, "Heaven save us, if the legal issues that are involved here are to be disposed of by a gentleman who shows such an absolute lack of legal knowledge as the Secretary of State shows."

By the CHAIRMAN:

Q. Was it that which induced you to write this: "My conferences with the Secretary of State gave me the largest satisfaction"?—A. My conferences with the Secretary of State gave me the largest satisfaction, taken as a whole. That is a general statement, and is true precisely as stated.

Q. Can you specify any one thing that he failed to comprehend in that interview?—A. I have specified several times over this discussion in regard to the non-assignability of a chose in action, and I attempted to make him see that there was a difference in buying property and in buying a chose, and discovered his apparent inability to see a difference in them.

Q. Was the son present on this occasion?—A. Not when that was discussed.

Q. You say, "I come to you, therefore, in the character in which you sit—eminently an *amicus curiæ*—and ask your aid solely in that character, to the sole end that the court may not fail, if judgment shall be asked, to judge justly. * * * It is my own choice, however, to lean chiefly to the judicial ideal, and to ask only such aid as original equity compels every judge sitting in equity to decree." It was then the aid of

the son that you sought to assist his father as a judge upon these questions?—A. Not to assist his father so much as to assist me.

Q. How assist you?—A. As an interpreter.

Q. To interpret your meaning to his father?—A. Precisely.

Q. And you thought he could do that better than you or Senator Blair, or any other attorney whom you might employ?—A. I had not necessarily thought of it in that contrasted way. I thought that his aid might be very valuable as supplementing what Senator Blair could do, and supplementing what I could do; but I did not think further. I might have gone on further to say that he might have supplemented what anybody or everybody else could do. I thought of him as one gentleman whose special co-operation in a special way might be useful.

Q. Did you not apply to him wholly because of the relation which he sustained as a son to his father?—A. I have already answered pretty fully—

Q. That is very easily answered.—A. I have already answered pretty fully, and I am sorry that those answers seem to go for nothing; but I am entirely willing to say again, specifically, in answer to that question, no.

Q. Did that enter principally into your mind in seeking his aid?—A. No, sir.

Q. Did you then seek, principally, his aid on account of his eminent legal ability?—A. I have never intimated that I sought him for his eminent legal ability; I have never intimated that, and certainly do not in the letter. I sought him as an attorney who, I was told, was well trained, and, for a young attorney, well versed in that peculiar culture which I thought the father lacked.

Q. But did you employ or seek his aid (these things taken for granted which you have just stated) because you thought he would have freer access to his father than anybody else you could employ?—A. I had in mind the fact, as one of the qualifications which I sought to utilize, that as son, as well as associate in office, he would undoubtedly have a very free access to his father.

Q. Did not that weigh largely on your mind in making this proposition?—A. That had a very important place in my inventory of the qualifications which I might utilize here, and it had the more weight with me at the time because of the fact to which I have already called attention, that the Secretary seemed overwhelmed with engagements, and a man who could be sure to get his ear was a man who had a very valuable quality.

The CHAIRMAN. Does any other member of the committee desire to put any questions? If so, he may proceed.

By Mr. BLOUNT:

Q. How did you expect to utilize Mr. Walker Blaine in behalf of your company when you regarded him in the position of an associate justice on the bench with the chief justice, and as bearing the relation of son to father? Was it a natural position for that gentleman to occupy that position, and that son to be utilized by you for that purpose?—A. I do not know what the question means.

Q. Well, I will see if I can put it in a shape that will effect that end. You have already stated that your object was to use this person as an interpreter of your peculiar views.—A. I did not know that I had stated that.

Q. Well, sir, you did.—A. I should like to have the reporter read as to whether I stated that.

Q. Well, whether you did or not I shall not take issue with you. You have stated then, as I understand you, that you expected to utilize him to translate your views as a translator; have you done that?—A. Yes, sir.

Q. How did you expect him to occupy that relation to you consistently with his relation as an associate justice hearing the question, and as son to father?—A. I do not know how I can answer that. I could very easily state why I should—

Q. Was not your idea by flattery, or any other suggestion, to get the use of Mr. Walker Blaine in your interest?—A. I cannot answer that question yes or no.

Q. Well, you can answer it as you please.—A. I have endeavored to state as fully as I know how to put it in language, all my purposes, motives, and desires in regard to seeking the aid of Mr. Walker Blaine in these premises. I can only understand the examiner's question to be a further probe with a view of bringing out what he does not phrase, which is substantially this: was it not my purpose to seek more aid—to secure more aid from Walker Blaine than, under the circumstances, I had a right to secure?

Q. Very well, you can answer to that.—A. Now, if that is what is intended, I can only answer that if I had any such motive, desire, or intent, it has utterly escaped my consciousness. I never knew that I had for one instant any desire to secure any improper aid from Walker Blaine, or any other aid than such as I thought officially and filially it was eminently proper that he should render in the premises. I addressed him just as I might have addressed one or another of a full bench of judges, when there seemed a special reason for calling the attention of one of the justices to one point. I regarded it just as proper to discuss that matter with him as with his father. I may have been mistaken, but I had no other thought in mind.

Q. Don't you think that communication, looking at it now, was subject to the criticism which perhaps prompted the Secretary to say to you through Senator Blair that he did not care to have you communicate with him through those around him in reference to this claim?—A. On the contrary, when the suggestion was brought to me that the Secretary wished me to communicate exclusively with him, it was mentioned in that connection that the reason for this was the fact that his first assistant, in his absence, when acting Secretary of State, had acted upon a matter which had brought the Secretary into great embarrassment, and that was given as a precedent and as the sole reason for the request that I should negotiate only with him.

Q. The only reason, the only instance which you have given of the services of this translator or where he could serve you well was in bringing to the Secretary's mind the distinction between the purchase of a chose in action and the purchase of property.—A. I beg pardon; I have stated that I had in mind at that time, when I wrote this letter, the submission of an entire brief to Mr. Walker Blaine for preliminary revision by him.

Q. So you did, but at the same time you stated that this was one of the difficulties that you were seeking to overcome—access to the Secretary's mind—and you gave that as an instance of one of the difficulties?—A. Yes, as one of them.

Q. Very well, and that instance I understood to be an illustration of the difficulties you had with the Secretary, and the need you had for his son. What advantage did Mr. Walker Blaine have over Mr. Blair, with whom you experienced great intimacy in his relation with the Secretary; what advantage did Walker Blaine have in translating your views to the Secretary over Mr. Blair?—A. As I have already answered, I expected Mr. Walker Blaine to supplement Mr. Blair. Further than that, I believed that the son, as I have said, would know his father's habits of thought better even than the Senator.

Mr. BLOUNT. I have no further questions to ask the witness.

By Mr. DEUSTER:

Q. You stated in your testimony in regard to Mr. William E. Chandler, "I will suggest the facts—I shall not state them fully." What did you mean by that, or would you be willing to state them fully now?—A. I stated that it had been determined to tender Mr. Chandler a retainer; that that determination was reconsidered and the retainer was never tendered; and the reasons why the retainer was never tendered are the reasons and the facts which I reserve, and which in the considerations of ordinary delicacy I think should be reserved.

Q. Have you seen Mr. Chandler since he was in Washington?—A. Since when?

Q. Since he is in Washington.—A. I do not know about his comings and goings; I saw him in Washington.

Q. Had you any conversation about your company with him?—A. I had.

Q. Would you be kind enough to let us know the conversation or communication that you had with him?—A. I beg to be excused.

By Mr. BELMONT:

Q. At what date did you see Mr. Chandler?—A. I could not say; my impression is that it was some time in October, or it may have been in November.

Q. But not since then?—A. No, sir.

By Mr. DEUSTER:

Q. What is the leading New York journal with whom you proposed to enter into negotiations to publish matters relating to the Peruvian Company?—A. I decline to state.

Mr. DEUSTER. Mr. Chairman and gentlemen of the committee:

I desire to state briefly my reasons for declining to put any further questions to this *quondam* witness. We entered into an investigation under a resolution of the House as to certain papers missing from the Department of State. In pursuance thereof we have had this witness before us for several weeks, during all of which time he has evaded every question tending to facilitate an honest inquiry into any action properly a subject for our information or that of the public. He has failed to submit to us documentary evidence of the legality of the claim for which, according to the testimony elicited, governmental aid in its recognition by foreign governments was sought, and failed to inform us even of the names of the persons composing the claimants constituting his company. In my opinion no citizen at the head of any industrial enterprise in whose behalf the interference of the National Government is asked can have any occasion for enwrapping into profound secrecy the names of those citizens most directly interested, if it is all an organization created for honest objects and purposes. From the correspondence so far as it has been published, and the facts elicited here, I believe and state it as my impression that I can perceive of no impropriety as having occurred, or to which the papers in question can have reference, save the improprieties committed by the president of the Peruvian Company in seeking to involve the

government in diplomatic difficulties in behalf of a fantastic and ephemeral claim and unknown claimants, and in attempting, for the same purpose, to improperly influence a United States Minister. I therefore move that the witness be dismissed for the present.

The CHAIRMAN. I will say in reply, that there is perhaps a misapprehension on the part of the public, and there may be on the part of Mr. Deuster himself, as to the mode determined upon for the conducting of this examination. As I understand, it is the purpose of the committee to assert its rights fully, based on its jurisdiction, and with due deliberation and respect for the rights of all. The witness will not be discharged to-day, but the examination will be suspended for the present and all these questions will be carefully scanned, closely compared with the scope of the resolution and the jurisdiction of the committee; their materiality will be carefully weighed by the committee, and when, in the committee's judgment, the question is proper and material to this investigation and within the scope of its jurisdiction, then, without any boast or threat, every power vested in the committee and in the House will be properly exercised. That matter the committee believe requires examination and deliberation both in justice to the witness, in justice to themselves, and in justice to the investigation. So that in due time all these matters will be carefully considered and brought before the committee for action.

I desire also to say that the committee is also of the opinion that at this time it is hardly proper for any of us to enter into an argument upon these questions; it is premature. The witness will have ample opportunity to be heard even after the committee shall have arrived at its conclusion.

Mr. Lord desires to ask some questions, I believe.

By Mr. LORD :

Q. You have testified that you were largely influenced to apply to Senator Blair for counsel on account of his intimacy with, and the access that he might give to, the Secretary of State; that is, according to your testimony.—A. Well, something like that.

Q. Is it not exactly that?—A. No, sir.

Q. Tell us how it differs then; perhaps you can do that quicker than we can read the record. Did you not testify that you were largely influenced in your desire to have Senator Blair's counsel on account of his intimacy with the Secretary of State, and the access that you might obtain to the Secretary of State through him would be thus facilitated?—A. Substantially that.

Q. Substantially that; it was exactly that, I believe. Now, did you apply to Mr. Walker Blaine for the same reason—that is, on account of his intimacy with the Secretary of State—or largely for that reason?—A. I think I cannot undertake to give any more reasons why I applied to Mr. Walker Blaine. If I have not made it plain I will plead incompetency on my part to make it plain.

Q. Well, we will assume that the reasons you have given are precisely the same reasons, or that they imply precisely the same reasons, that you were influenced by in your application to Senator Blair.—A. I have no control over the committee's assumptions.

Q. Very well, then, we won't assume that; but I will ask if you did not apply to Mr. Walker Blaine on account of his intimacy with the Secretary of State at all?—A. As I have defined that intimacy as being official, personal, and filial, I will answer yes to your question.

Q. That is a sufficient answer to that. Now, was it your object in both instances to influence the instructions to be given to Minister Hurlbut at Peru with regard to the affairs of the Peruvian Company?—A. Undoubtedly.

Mr. LORD. Very well; that is all I have to ask.

The CHAIRMAN. Are there any further questions from the committee?

The WITNESS. I understand the chairman's assurance to have anticipated a question I was about to ask, whether the committee will bear me, at its own pleasure of course, directly upon the reasons why I have declined to answer certain questions.

The CHAIRMAN. I presume those matters will all come up hereafter, and I desire to give notice now that the examination is simply suspended for the present, and the witness of course will hold himself subject to the call of the committee, and not regard himself as discharged from the subpoena.

The WITNESS. Am I permitted to return to New York for the papers?

The CHAIRMAN. I presume you will be.

The WITNESS. I would like to know definitely the committee's pleasure.

Mr. BLOUNT. What papers do you propose to produce?

The WITNESS. I am awaiting the suggestion of the committee as to what they want. The chairman promised me a list. When I see that list I will state whether I see any which should be excluded.

The CHAIRMAN. We will consider that in due time; but I think the probability is that you will not be called upon before next week, the latter part of the week.

The WITNESS. What shall I depend on; shall I go home?

The CHAIRMAN. We will arrange that, and the Sergeant-at-Arms will give you notice.

Mr. BLOUNT. As I understand, the correspondence we want Mr. Shipherd has refused to furnish generally, or part of the correspondence.

The CHAIRMAN. The papers are specified in the subpoena *duces tecum*.

The WITNESS. The committee set aside its subpoena and substituted a new order, which new order I have implicitly obeyed. Now I understand on the demand of the House which was served on me on my return, additional papers were called for. I have indicated my willingness to furnish a part of those, and I have not consciously declined to furnish any except the correspondence with Senator Blair; I think those are the only papers which there has been a temporary issue about.

Mr. BELMONT. Have you expressed a willingness to furnish the correspondence with General Grant?

The WITNESS. I have not been asked on that point generally, as I understood it. I shall wait for the pleasure of the committee in furnishing me a specific list.

The CHAIRMAN. I will say that the committee have not considered that subject as they desire to, but they will do so, and furnish you with a list. If there is nothing further, this hearing will stand adjourned until half-past ten o'clock Thursday morning.

Mr. BLOUNT. I understand that Mr. Shipherd is not expected to be here at the next meeting?

The CHAIRMAN. Not until notified by the Sergeant-at-Arms.

The WITNESS. I shall be notified through the Sergeant-at-Arms how soon I can return to New York?

The CHAIRMAN. Yes, that is the understanding.

The committee then adjourned to April 20, at 10.30 a. m.

APPENDIX.

[Printed for private use only.—Not published.]

THE PERUVIAN COMPANY.

OFFICIAL ANNOUNCEMENT.

December 1, 1881.

The Peruvian Company authorizes the following statement of facts:

THE PROSPECTUS,

published in May last, embodied somewhat fully the historical facts in which the company's title is found imbedded, and to it reference is made for the explanation of such allusions as may seem not sufficiently explained in this briefer monograph.

HISTORY OF THE TITLE.

The guano beds of Peru lay useless and valueless as her mountain tops until the year 1840, when Alexandre Cochet, an eminent French chemist and scientist—who for fifteen years previously had been opening to the amazed people of nearly every South American nation in turn the “untold riches” of their soils and growth, until the record reads like a chapter of enchantment—analyzed some samples and discovered them to be almost pure crude ammonia, and thereupon opened to the Peruvian Government the European market, which has ever since yielded it enormous revenues.

For reasons amply explained in the prospectus, Cochet, entitled to one-third of all this guano, and solemnly adjudicated the discoverer, died a pauper in a Paris poor-house, leaving one son in Lima, and a valid will which bequeathed all his property in effect to this son.

That son duly conveyed the entire estate to an American gentleman, who in turn has conveyed it to the shareholders of the Peruvian Company.

The original adjudication by a committee of the Peruvian Congress, a duly verified copy of Cochet's will probated in Paris, the original conveyance from the heir, executed and attested in Lima, the identification of the heir by the Peruvian authorities, verified by the proper officer in Lima, and the irrevocable power of attorney, duly re-

recorded in Lima and certified by the recording officer, are all in the possession of the company's counsel, Messrs. Lord, Van Dyke & Lord, 261 Broadway, New York, who will answer all inquiries concerning title.

With the papers above enumerated are a large mass of Cochet's original notes and memoranda, and other documents preserved by him and sealed up by the notary at the time of his death. These papers include all the originals from which his pamphlet entitled "Truth Demonstrated" was originally printed, and cover the entire period from 1826 to the time of his death. They throw a flood of original light upon the entire history that concerns this company.

The general merits of this title have been critically examined and approved by such eminent counsel as

Hon. George S. Boutwell,
 Hon. Henry W. Blair,
 Hon. A. H. Cragin,
 Hon. Scott Lord,
 Hon. W. W. Eaton,
 Hon. I. P. Christiancy,
 Hon. W. H. Robertson,
 Hon. A. G. Riddle,

and others, whose united judgment has been supported by that of Peruvian, Chilian, and Spanish counsel of the highest rank. Perhaps the most satisfactory testimonial has been the opinion of eminent counsel retained to oppose the title, who, after months of anxious research, frankly declared that the claim on its merits seemed impregnable.

THE COMPANY'S CHARTER.

The shareholders have perfected their organization under a special corporate grant made by the State of Georgia, October 24, 1870.

The validity of the grant was separately reported upon by

Hon. E. F. Hoge, of Atlanta,
 Hon. George S. Boutwell,
 Hon. W. W. Eaton, and
 Hon. Scott Lord,

and unqualifiedly approved in each instance.

The powers conferred are of extraordinary scope; probably broader than have been conferred in any other instance, and expressly authorize the transaction of business in all parts of the world. Copies in detail may be had upon application. The company having never transacted business, no question of possible outstanding liabilities is involved. All the original organization records are certified under the great seal of Georgia. The special privileges conferred are thus stated:

"May purchase, have, hold, possess, and acquire, by any lawful means, any estate, real and personal, and the same may use, let, lease, sell, mortgage, transfer, and convey, and may sue and be sued, plead and be impleaded, contract and be contracted with, and have, possess, and enjoy all the rights, powers, franchises, and privileges which are or may be necessary or proper for them to have, use, possess, exercise, and enjoy, to enable them, as a company, to manufacture iron and steel, and any and every other article and commodity whatsoever, and also to contract for the construction of houses, bridges, railroads, canals, and any other work and improvement, public or private; and to do and perform whatsoever may be proper for them to do in furtherance of their contracts so made, and to enable them to make their labor available in the proper development of their property, and fulfillment of their contracts * * * and may from time to time increase the resources of the company by borrowing money on a pledge of their property, or without such pledge, or by new subscription, and the shareholder shall be bound, each for himself or herself, to pay the sums by them respectively due upon the shares held by them; and the sums then due or to become due having been paid, such shareholders shall not be liable for any further payment on account of such shares.

"Sec. 4. *Be it further enacted*, That the said company shall have an office in this State, and the directors from time to time may organize and establish local or branch associations in this State and in the other States and in Europe and elsewhere, and may from time to time enact by-laws and regulations for the management of the business of the local or branch associations, and prescribe the number of their officers and agents, and designate their powers, duties, and compensation. And the principal associations and each local or branch association shall be under the management of directors chosen by the shareholders of such associations respectively, and shall have like powers, franchises, and privileges as are herein granted to the principal association, subject to the limitation and restrictions prescribed by the directors of the principal association. And the profits accruing on the business of the several associations shall be divided among the shareholders of the association in which such profits may accrue in the proportion of the shares held by them respectively in such

associations. And the principal association and each local or branch association shall be responsible for and bound to pay the sums due upon the obligations and contracts by them respectively entered into, but neither the principal association nor any of the local or branch associations shall be liable for or bound to pay the sums due upon the obligations or contracts of any other association, unless by contract they shall have agreed to become liable therefor."

The amount of capital stock is not limited, and the grant is in perpetuity, subject only to the constitutional right of repeal or modification after thirty years.

ASSETS AND CAPITALIZATION.

Counsel are agreed that Cochet became vested with the fee absolute of one-third of all the guano that existed in Peru at the time he placed his discovery at the command of the government.

If so, the Peruvian Company is entitled to one-third of all the guano still remaining in Peru, and this one-third is estimated approximately at not less than \$100,000,000. The company is also entitled to one-third of all the moneys received by the Peruvian Government for guano sold, with interest; and if interest be estimated at 6 per cent., the approximate amount of this one-third of these moneys is \$900,000,000, making total assets of, say, \$1,000,000,000.

The total has been capitalized at \$200,000,000, or one-fifth only of par. The "pool stock" is fixed at \$250,000,000, being \$200,000,000 for the estate and \$50,000,000 for the treasury for working capital.

COLLATERAL MARGINS.

The Landreau claim for, say, \$125,000,000, being an inferior lien, although incontestably valid, cannot be paid until the Cochet claim has first been satisfied, and is therefore offered to the Peruvian Company on nominal terms, in whose hands it may ultimately be worth par.

The bonded and floating indebtedness of Peru, which the company undertakes to fund, will approximate \$500,000,000, and the company's margin on the funding will not be less than 50 per cent. It is a conservative estimate to allow \$350,000,000 net profit on the items above mentioned.

COLLATERAL UNDERTAKINGS.

By very far the richest deposits of silver, gold, and quicksilver in the known world lie in Peru. The real value of these it would tax credulity to put in figures. There are over twelve hundred miles of finished railways belonging to the government, and the right of the Peruvian Company for itself and its associate creditors is absolute to take any part of the insolvent's estate it may elect.

FINAL BALANCES.

Large as such figures are, the resources of Peru are sufficient to pay all indebtedness in full with interest, and leave her still the richest territory in the world per square mile. Upon this point the evidence is unquestionable. But of course this can never be done under any torrid administration of the estate. There must be ordinary honesty, ordinary industry, and ordinary thrift; nothing more is needed.

A Boston capitalist, for twenty years past resident in Chili and Peru, laid down the company's prospectus at the end of a careful reading with the comment, "That don't tell *anything*! The man who wrote it doesn't begin to comprehend the possible future of the Peruvian Company; the silver of Peru alone is worth more than all Tarapacá."

THE OPENING OF THE AMAZON.

The Peruvian Company can easily enough open the Amazon, which rises in Peru and is navigable there for hundreds of miles. In due course it will be done; and the most valuable waterways of the world will all lie under its hands. The cutting of two easy canals only is necessary to enable an American shipmaster to enter the mouths of the Orinoco, sail 20,000 miles in South America without once going ashore, and emerge at Buenos Ayres. The late Professor Agassiz declared at the end of his tour of the Amazon Valley that its arable land would support the entire population of the globe, and that he had found there more than one hundred and fifty varieties of choice woods, each one of which is at least as valuable as rosewood.

THE COMPANY'S DEMANDS.

These were filed in the Department of State at Washington on the 11th of October, 1881, as appears by the following note from the Secretary of State:

“DEPARTMENT OF STATE,
“Washington, October 12, 1881.

“JACOB R. SHIPHERD, Esq.,
“President of the Peruvian Company,
“10 Spruce street, New York:

“SIR: I have to acknowledge the receipt of your letter of the 10th instant, inclosing printed copies of two notes addressed by you to Hon. J. F. Elmore and the other to Hon. Marcial Martinez, both of which have been placed upon the files of the Department.

“I am, sir, your obedient servant,

“JAMES G. BLAINE.”

The originals of these notes were delivered by the company's counsel, Hon. George S. Boutwell, to the addresses at their respective legations in Washington on the 13th of the same month, and proofs of such delivery were filed in the department in due course. Copies were at the same time sent to the American ministers at Lima and at Santiago.

The full text of these notes is as follows:

I.

“[OFFICIAL COPY.]

“SIR: I am charged with the duty of bringing to the official notice of your excellency the fact that one-third of all the guano lying in original deposits within the territory of Peru, on the first day of January, 1841, is now and for some time past has been the property of the Peruvian Company, a corporation created by one of the United States, and composed exclusively of American citizens, whose title has duly descended from Alexander Cochet, duly adjudged to have been the first and true discoverer of guano in Peru, and in whom the fee absolute to such one-third was duly vested by the republic, by operation of law.

“I am therefore further charged to demand, as I now do, in behalf of this owner, due recognition by the existing government of all the rights of the Peruvian Company in the premises as such owner, and the formal release in its favor of all custody, control, claim, and assertion, adverse to the title herein asserted, so far as the Government and people of Peru are or may be concerned.

“I am further charged to demand, as I now do, payment in full, with interest from the date of the removal, for so much of the property hereby demanded as may not be found in the place of original deposit when the Government of Peru shall attest the release herein above demanded.

“And in view of the temporary embarrassments of Peru, I am further charged to protest, as I now do, against any and all negotiations and acts tending toward the cession, sale, lease, hypothecation, or other incumbrance or disposition of any property held, owned, or controlled by Peru, pending the full satisfaction of the demands herein made and intended.

“A copy of this notice and demand will be delivered to the honorable the Secretary of State, at Washington, and a duplicate is herewith inclosed for transmission, at your official discretion, to his excellency the President of Peru.

“I shall be pleased to supply his excellency the President of Peru, upon due request, any further information appropriate to the premises, including all necessary evidences of the title herein asserted, and to designate a commissioner, duly authorized to represent the owner in the immediate custody and control of the property hereby demanded.

“In conclusion, I beg your excellency to receive due assurance of the distinguished consideration with which I have the honor to remain

“Your excellency's obedient servant,

“JACOB R. SHIPHERD,
“President of the Peruvian Company.

“Dated New York, October 1, 1881.

“To his excellency the Honorable J. F. ELMORE,
“Minister of Peru, Resident at Washington, D. C.”

II.

“[OFFICIAL COPY.]

“SIR: I have the honor to inclose herewith a copy of a communication heretofore addressed and delivered to his excellency the Minister of Peru, resident at Wash-

ington. I add also another copy of the inclosure and a copy of this note to be forwarded, at your official discretion, to his excellency the President of Chili. A further copy of this note will be delivered to the honorable the Secretary of State at Washington.

"The immediate and sincerely friendly purpose of this note is to spare the Government of Chili the serious embarrassment which would necessarily follow if the representatives of Chile now in Peru should continue to deal, however inadvertently, with the property of citizens of the United States as if it were the property of Peru.

"And hereupon I am authorized to assure your excellency in no doubtful terms of the readiness of the Peruvian Company to recognize every fact involved in the actual status resulting under the rules of war among civilized nations from the campaign of Chili now closing, reserving only those indestructible rights of neutrals which even war must recognize and protect.

"It is believed that, so far from embarrassing or delaying the conclusion of a peace honorable alike to victor and vanquished, and just to all interests to be affected by the adjustment so much desired and as yet so vainly sought, the interests which I have the honor to represent may be so circumstanced as to afford to all parties an immediate and final solution of all urgent problems, and especially may afford the most efficient and substantial guarantees of a long period of peace and prosperity in the immediate future—that peace which tends only to industry and internal content, and indisposes to intrigue and to war.

"It may be proper to prevent possible indistinctness that I should specifically point out some of the leading implications of this communication as to the past as well as to the future, and, with your excellency's indulgence, I therefore proceed to observe:

"*First.* That this notice of title is unqualified, and may be understood to imply whatever may be implied by an unqualified notice and demand in like premises.

"*Second.* That the Peruvian Company expects Chili to account to it for whatever guano she has removed or suffered to be removed from original deposits in Peru at any time since January 1, 1841.

"*Third.* That the Peruvian Company expects Chili on and after the day of the delivery of this note and its inclosures to your excellency, to recognize and protect the title herein asserted throughout the territory of Peru so long as the military forces of Chili shall continue therein.

"*Fourth.* That for any failure or refusal hereafter to recognize and to protect the title herein asserted, the Peruvian Company expects to hold Chili directly responsible; and the company will, in such case, rely upon the protection of its own government.

"*Fifth.* It should not be overlooked that so long as the military forces of Chili continue in Peru, the company must require of them directly, and must hold the Government of Chili directly responsible for all the protection, relief, and assistance which, but for the occupation, it might properly demand of the Government of Peru; and express notice of such requirement is hereby given, together with like notice that for any detention or appropriation of or injury to the property of Peru, the debtor of the Peruvian Company, after the delivery to your excellency of this notice, and pending the full satisfaction of the demands comprised in the memoranda herewith inclosed, the company must and will hold the Government of Chili directly liable in full.

"Of course, I am ready to supply to his Excellency the President of Chili, upon due request, all further information appropriate to the premises, including all necessary evidences of the title herein asserted, and to designate a commissioner duly authorized to represent the owners in the immediate custody and control of the property hereby demanded.

"Not for a moment doubting the sincere readiness of the Government and people of Chili at all times to do justice, and fully confiding in the early and amicable adjustment of all issues herein contemplated, I avail myself of this opportunity to assure your excellency of the distinguished consideration with which I have the honor to remain

"Your excellency's obedient servant,

"JACOB R. SHIPHERD,
"President of the Peruvian Company.

"Dated New York, October 5, 1881.

"To his Excellency the Honorable MARCIAL MARTINEZ,
"Envoy Extraordinary and Minister Plenipotentiary of Chili at Washington."

PROPOSED AGREEMENT WITH PERU.

Some such agreement as that outlined below may be made with Peru. A foundation for it may possibly be laid by a treaty between the United States and Peru, in which certain general agreements between the two governments might be defined.

Collateral agreements with European bondholders, with Chili as to a war indemnity, and with other creditors would naturally follow.

Suggestions of points to be included in an agreement between the Government of Peru and the Peruvian Company.

I. THE GOVERNMENT TO STIPULATE:

"*First.* That in 1840 Alexander Cochet discovered guano within the meaning of the decree of February 13, 1833.

"*Second.* That the congressional and executive acts and declarations of 1847, 1849, and 1851 mean this.

"*Third.* That this meaning has never been denied or questioned by the government heretofore, and shall not be denied or questioned hereafter.

"*Fourth.* That Cochet's discovery immediately vested in him a complete title to one-third of all the guano in original deposits in Peru, and that such title was a title to one-third of each separate deposit.

"*Fifth.* That the removal of Cochet's one-third of each deposit by the government, or by its agents, was an act for which Peru is bound to make amends to the owner.

"*Sixth.* That the measure of damages to the premises cannot be less than the value of the converted property at the time of its conversion with interest at 6 per cent.

"*Seventh.* That the agreed total of these damages, including to January 1, 1881, is \$900,000,000.

"*Eighth.* That this total shall be capitalized as of that day, and shall bear interest at 6 per cent. until paid.

"*Ninth.* That payments hereafter made shall be applied first to meet accrued interest, and afterward to reduce the principal.

"*Tenth.* That under the law of contracts of 1845, this indebtedness of Cochet is entitled to priority over any debt contracted by the government after the passage of that law. Also that all contract obligations created against the government after that date, which might antagonize this priority, must be subordinated to it.

"*Eleventh.* That no payment on account of the indebtedness of the government to Cochet has ever been made, although a grant of 5,000 tons guano in his favor on account of his expenses was once authorized.

"And that there is, therefore, now due to Cochet and his legal representatives—

"1. The sum of \$900,000,000 liquidated damages with interest at 6 per cent. from January 1, 1881, until paid.

"2. One-third of all the guano remaining in Peru in original deposits at the date hereof.

"3. The value of one-third of all the guano taken from original deposits in Peru between January 1st, 1881, and the date hereof, with interest at 6 per cent. until paid.

"*Twelfth.* That all the rights of Alexander Cochet in the premises have been duly transferred to, and are now vested in, the Peruvian Company, party herein.

"*Thirteenth.* The government, therefore, hereby recognizes, and formally acknowledges, its direct indebtedness in the premises to the Peruvian Company—

"1. In the sum of \$900,000,000, with interest at 6 per cent. from January 1st, 1881, until paid; and this sum is admitted to be due and payable in full before any indebtedness created prior to the passage of the law of contracts of 1845.

"2. In the value of one-third of all guano taken from original deposits in Peru, since the 1st day of January, 1881, with interest at 6 per cent. until paid.

"*Fourteenth.* The government also acknowledges the Peruvian Company to be the owner absolute, with title complete in Cochet and his legal representatives since 1840, of one-third of all the guano remaining in the original deposits in Peru, with a perpetual easement of approach and right of access thereto, over all lands and waters since 1840 at any time within the territory of Peru, and the free and unhindered right to hold, use, sell, assign, and take the same and every part thereof, away at the company's discretion, without let, hinderance, impost, taxation, charge, or condition of any kind.

"*Fifteenth.* And whereas, the government is now unable to pay or discharge this large indebtedness or any considerable portion thereof, and by the misfortunes of war is otherwise disabled for the time being, the government cannot now refuse its chief creditor any access to the resources of the country, out of which payment might be made under a just administration directed by the creditors.

"*Sixteenth.* Yielding to the just demands of all interests concerned in the premises, and in the hope that the remaining deposits of guano and nitrate may suffice for the discharge of all its indebtedness under proper administration, the government hereby acquiesces in the proposal of its chief creditor, made in its own behalf and in the interest and behalf of all creditors of the government whose express agent it may in due course hereafter become, to take immediate possession of all original deposits of guano and nitrate which were within the territory of Peru January 1, 1881, and to take such possession of all adjacent lands and waters as may be necessary or conven-

ient to the mining and removal of such deposits, such possession of the deposits and use of adjoining lands and waters for the purposes of this agreement and the proper administration of the trust occupation hereby consented to, during the term of such occupation hereby limited, to be that of the lord of the soil; and the integrity of such possession the government hereby guarantees. The term of occupation to expire upon the full payment of the indebtedness herein recognized as already due, or which may hereafter become due to the Peruvian Company or to any other creditor whose agent or assign the company may hereafter become. The term of one year after such full payment to be allowed the company for the liquidation of its affairs and the withdrawal of its agents from the Republic.

“Seventeenth. In case the deposits of guano and nitrate shall be exhausted, or shall prove insufficient to pay the interest upon the capitalized indebtedness herein recognized, the company shall be at liberty to propose such other measures, amendatory of those herein agreed upon, as it may deem just in the premises.

“Eighteenth. The government guarantees the personal liberty and safety of all officers, agents, servants, guards, and guests of the company within the Republic, and recognizes in their favor an unqualified right of entry, residence, and departure at pleasure, subject always to the condition of personal good behavior, and the non-abuse of the national hospitality. Offenses against public order may upon demand of the company be adjudged and punished by an agreed tribunal, or in default of such agreement by the company itself.

“Nineteenth. The government will never impose any taxation, direct or indirect, upon the company, nor upon its property or business, nor upon any of its officers, agents, guards, servants, or guests, their property or business; but it may require the company, as to any individuals so exempted, either to consent to such taxation as might otherwise be imposed under general laws, or else to credit to the government the amount thereof in account current as of the date when it would be due under the law. Such requirement must be duly notified to the company year by year, to be effective, and must include full specifications of the taxes required to be consented to or credited for the year then current.

“Twentieth. The company may at its discretion maintain at all times such a force as it may deem necessary for the protection of its property and interests, and this force may include detachments from the land and naval forces of the United States of America, and of any other government whose citizens are shareholders of the company, or are recognized creditors of Peru.

“Twenty-first. The government consents to the transfer to the company, by sale or other assignment, of any indebtedness now existing or hereafter arising against the government, which has been duly recognized by the government as a valid claim, and to the consolidation for the purposes of collection of any claim so transferred with the principal indebtedness herein recognized. Before the transfer of claims which have not been recognized the government reserves the right to demand their contest before and adjudication by arbitrators, or such other tribunal as may be agreed upon.

“Twenty-second. The government necessarily consents to the deduction from the gross revenues arising from the working of the resources hereby placed at the command of its creditors, of all expenses of operation, administration, and defense, and demands that the net remainder of such revenues shall be passed to its credit by the company annually in account.

“Twenty-third. The government engages to execute at any time hereafter, upon request, any further memoranda of recognition and definition necessary or convenient to the effectual fulfillment of this agreement according to its true intent.

“II. THE COMPANY TO STIPULATE:

“First. To make no other demand for payment so long as this agreement shall be observed in good faith by the government and people of Peru; and the net revenue realized by the company under this agreement shall suffice to pay the interest annually accruing upon the entire indebtedness due from Peru to the company.

“Second. To offer to all other just creditors of the government the company's certificates of indebtedness, bearing interest at not less than three per cent. for the par value, including accrued interest, of all recognized claims against the government existing on the day of the date hereof, and to provide for the annual retirement of such certificates by a sinking fund created by the reservation to its credit of not less than one half of the entire annual net revenue of the company in excess of thirty millions of dollars.

“Third. To deliver annually to the government a certified transcript of the results of the entire business of the company clearly itemized, and showing in detail the state of the account current between the company and the government.

“Fourth. To maintain toward the government and toward the people of Peru an

attitude of sincere friendship and good-will, and to use all means to render its temporary residence within the Republic not only inoffensive but useful.

"*Fifth.* To enforce upon all its agents, servants, and representatives due respect to the government and institutions of the Republic, and unhesitating obedience to its just laws.

"*Sixth.* To maintain, and to enforce upon all its representatives a strict neutrality toward all political parties and interests, domestic and foreign, except only as the protection of the property interests of the company may otherwise require; and whenever such interests may demand the expression of a preference such expression shall be made in the company's name upon competent authorization.

"*Seventh.* To co-operate heartily with the government and the people in all measures calculated to promote the early restoration of the prosperities of peace and order, and to forward the commercial and industrial development of the republic.

"*Eighth.* To consolidate with the principal indebtedness herein recognized only such claims against Peru as have been duly certified or recognized by Congress or by executive officers of the government.

"*Ninth.* To unite with the government in the measures necessary to an adjudication by arbitrators or by an agreed tribunal of all claims not so recognized in which the company may become interested.

"Mutual Covenants.

"*First.* That no tribunal shall ever have jurisdiction of this agreement or of any issue arising between the parties hereto, except by the prior express consent of both the parties.

"*Second.* That each party shall maintain a resident representative near the executive of the other, duly accredited to such executive, and that the ordinary intercourse of the parties shall be maintained through these representatives according to diplomatic usage.

"CREDITORS' SINKING FUND.

"A sinking fund will be established upon such basis as shall promise the best results. An outline for one has been prepared by way of suggestion.

Peruvian Sinking-Fund Script.

"*First.* All recognized creditors to be invited to surrender their claims to the company (by assignment) and to receive in exchange the company's sinking-fund script for the par face of the claim, including accrued interest to the date of exchange; this script to bear interest at 4 per cent. until paid.

"*Second.* Script to be issued in even amounts of \$1,000 and multiples thereof; also in any desired fractional amounts, and to be transferable at the holder's election, either by delivery or by registration, and to be payable at the company's principal treasury, in New York, July 1, 1883, and annually thereafter.

"*Third.* Chili to be recognized among the creditors of Peru, for such a reasonable amount as may be agreed upon between her and the company, and to accept her allotment of script in full of all demands against Peru.

"*Fourth.* The company will prefer its shareholders to the extent of 3 per cent upon a fixed capitalization of \$1,000,000,000, and will pay annually on the 1st day of April, beginning with 1883, one-half its net income above such 3 per cent. to the credit of the commissioners of the sinking fund.

"*Fifth.* On the 1st of April, 1883, and annually thereafter, the commissioners of the sinking fund will notify the governments of the United States, Great Britain, France, Germany, Italy, Chili and Peru, and also the presidents of the leading stock exchanges in each of these countries, and by advertisement for not less than one month in at least one leading paper in each of these countries will notify whom it may concern, and by circular through the post will notify separately every registered holder of script of the amount to their credit for the year applicable to the redemption of the company's script, and of the time when, the place where, and the terms upon which proposals for the sale of script will be received.

"*Sixth.* Such proposals shall be addressed to the 'Commissioners of the Sinking Fund of the Peruvian Company,' at the company's principal office in the city of New York, and shall be accompanied with a guarantee draft on New York bankers for five per cent. of the flat face amount of script offered by each bidder, payable to the order of the commissioners, to be returned to the bidder immediately after the adjustment of awards.

"*Seventh.* Each bidder shall state the flat face amount of script he is prepared to deliver if his bid shall be accepted, and the fixed per cent. of its gross face value, in-

cluding interest, he is content to receive in full payment therefore; no bids in excess of 100 per cent. to be considered or accepted at any time.

"Eighth. The commissioners shall consider in each year only such bids as conform to these specifications, and are received by them on or before the 1st day of July in that year. On the 2nd day of July, 1883, and annually thereafter—except when this day shall fall upon a Sunday, and in such year upon the 3d day of July—at noon, the commissioners shall meet in open session at the company's principal office, in New York, and in the presence of any bidders who may choose to be present in person or by duly accredited attorney, shall open, read, and tabulate the proposals received, and immediately upon the conclusion of such tabulation shall award and declare in favor of the lowest bidders, a purchase of so much of the script offered as the fund at their disposal will suffice to pay for; and the details of such award shall be officially communicated within ten days thereafter to whom it may concern by circular through the post and by advertisement.

"Ninth. Payment for script awarded will be made by the company's treasurer only upon the certificate of the commissioners.

"Tenth. Guarantee checks of successful bidders will be forfeited unless the script offered by them shall be presented for redemption within sixty days after the declaration of award. Neither the company nor the commissioners will guarantee the delivery of the notice of award.

"Eleventh. With each lot of script presented for redemption the bidder must tender a proper release under seal—upon forms to be supplied by the company—setting forth his acceptance of the amount awarded as payment in full.

"Twelfth. Interest upon accepted script will cease upon the day of award.

"Thirteenth. There shall be five commissioners of the sinking fund, who will be paid by the company out of the sinking fund; of these one at least shall be named by the company, and of the others one may be nominated by the Government of Peru, one by the Government of Chili, one by the Government of Great Britain, and one by the Government of France; such nominations to be made annually to the company, and to be subject to its approval and appointment.

"Fourteenth. These conditions to be printed upon and to form part of the company's agreement with the holder of each certificate of script."

WHAT WILL PERU DO?

It is assumed only that Peru will try to save herself. Her enemy has utterly humbled her, and seems now bent upon wiping her out of being. To this last attempt the United States has felt called upon to interpose diplomatic objections in the interest of humanity and civilization. The recognition by the Peruvian Executive of the incontestable equities presented by the Peruvian Company would put it out of the power of third parties to debate them, and would give the company unquestionable grounds for calling upon the United States to protect, at least, the company's property against all mere marauders. This is only one of the thousand cases in which a helpless insolvent finds his nearest friend and most powerful ally in his largest creditor. The logic of facts controls all such issues. When it is added that Peru has no other friend besides the Peruvian Company, the probable outcome needs no definition.

WHAT WILL CHILI DO?

Despite the war record they have made in Peru, the fact remains that the Chilians have the right to declare themselves easily at the head of South American civilization. It is merely assumed that they have at least ordinary good sense. For in such case they, too, must submit to the logic of facts. They may be conquerors of Peru, but they are not conquerors of the property rights of American citizens in Peru; the utmost they can claim is what shall be left of Peru after her creditors have first administered upon her estate. Civilization and law, not barbarism, will control whatever settlement is to be made.

WHAT WILL THE UNITED STATES DO?

It is only assumed that the United States is a nation, and no longer a vague mass of individuals. Society is a failure if it does not, as a strong unit, protect each individual member. Nothing is needed, or will be needed, beyond a clear intimation from the Executive, at Washington, that the property rights of American citizens in Peru must be respected alike in war and in peace. The commerce of the world has hitherto sought the cover of the British flag, because it has become known that to strike any Briton is to strike the British Lion. While the United States, as a callow youth, was making its growth, it wisely avoided, even at the risk of seeming timidity, all avoidable foreign issues. But it is now the common consciousness of our

people that our majority has come. We have now more available power for war than any other people on the face of the globe. This gives no reason for folly, but ample reason for submitting to no wrong. Our people all feel it, and upon occasion will act unhesitatingly.

MAY AMERICAN INTERVENTION RESULT IN WAR?

By no conceivable possibility. What idle babble about war has been heard is the querying of the ignorant and idle, or the weak vamping of the foolish. A war between Chili and the United States would be as ridiculous as a battle between a man and a mouse. The facts will control the result.

WHAT WILL THE EUROPEAN BONDHOLDERS DO?

Presumably, the best they can. The proposal of the Peruvian Company being far more liberal than any other they have had, and, as the case stands, more liberal than any one else can afford to make them, the logic of facts is likely here also to control easily enough.

The same facts exist with reference to all the other creditors of the insolvent. No other party can make terms so liberal and offer guarantees so substantial as those outlined in these pages. Mathematics and gravity will control.

THE MAGNITUDE OF THE ENTERPRISE.

All magnitudes are relative. This scheme involves unusual figures, and these unusual figures will at first awaken distrust in the average mind. But the final analysis will show every capable business man that no elements of special difficulty are involved; that, in effect, unusual magnitudes furnish here, as elsewhere, their own momentum, and that the gist of the matter is that so large an interest once under way must succeed because it is irresistible.

COLLATERAL ENTERPRISES.

The collateral enterprises that must attend and follow such a pioneering force as this will suggest themselves to the intelligent reader. Commerce, transportation, manufactures, mining, shipping, the arts—all that prospers under an advance of American civilization—must prosper in the wake of the Peruvian Company. Anarchy, war, prejudice, all the outgrowths of ignorance and indolence, must perish.

Peruvians, Chilians, Americans, Europeans of every race, concerned together in legitimate commerce of controlling magnitude and of equal profit to all, must be friends, and the accumulation of wealth will create due demand for all the finer arts.

THE RESULT TO THE UNITED STATES.

There will be opened to American individual enterprise by far the richest country on the globe, now almost a waste, where all must now be poor because there are not inhabitants, enterprise, or capital enough to occupy one-tenth of the waiting opportunities. No political questions will arise, because the United States wants no colonies, and will never annex territory 5,000 miles away.

Americans will flock to Peru as all the peoples of Europe flock to America, each family for itself, all welcome and all bent upon industry, culture, and thrift. Europeans, too, will flock thither direct when an American hand is seen at the commercial helm. The Republic of Peru will continue intact, and will assimilate all comers as the Republic of the United States assimilates all comers to it. Bolivia, Chili, Ecuador, every adjacent government will feel the impulse, and will share the general growth without apprehension, because American merchants are too wise to leave trading for fighting.

THE TIME IS OPPORTUNE.

Our exports, yet in their infancy, are now \$250,000,000 a year more than our im-
ports, and our imports were never before so large.

Our manufacturers are able, large as their sales are, to make more than they can sell. The completion at an early day of the ship-railway at Tehuantepec will bring Callao and New York close together, and the opening of the Panama Canal a little later will give American shipping the easy empire of the Pacific. Peru will export \$200,000,000 annually of guano, nitrate, and the precious metals, and will buy with them what she wants where she can buy it best.

THE MONROE DOCTRINE.

The establishment of the Peruvian Company upon its great estate will end in a moment the last echo of debate about the Monroe doctrine.

The Monroe doctrine, as now held, is that the United States is the only great power in the Western hemisphere, and must be left to do for this hemisphere what the several great powers of Europe do as great powers for Europe, Asia, and Africa. It is based upon the mere recognition of the admitted facts. Happily, indeed, the perpetual change in the United States of the individuals who use executive power renders impossible the unwholesome appetite for national enlargement which is the bane and burden of Europe. All the ambitions possible to the United States are those of wholesome growth in wealth, culture, and manliness. As already in Mexico, so in Peru and throughout South America, it will be seen that American ambitions exhaust themselves in the creation of prosperity for its own sake and without once touching the political fabric. It is not easy for European statesmen to comprehend this at once, perhaps, but critical analysis demonstrates it.

THE GOVERNMENT AND THE COMPANY.

It has already been charged and will be doubtless again charged—but always by the heedless or the vicious only—that the Government of the United States has been committed or is to be committed to the improper aid of individual interests.

Both the government and the company will easily outlive all such misstatements.

The company has fallen heir (if it is desired to put it so) to a large estate in a foreign country. Its officers must be weak indeed if they expect the government to do any more for them than it does—conditions being equalized—for every other corporation within its jurisdiction. Against anarchy, riot, and the denial of justice, every government guarantees every citizen loyal to it. This is the function of government, and it has no other function.

THE PERSONNEL OF THE COMPANY.

The company coming at once to a great property in a form immediately marketable, has use for but a nominal cash capital. A single million of dollars would amply serve all its own needs.

But the state of war has brought confusion and distress, and money must at the outset be provided to restore the beginnings of order; just how much money, it is as yet too soon to say. Whatever amounts may be needed will be easily enough arranged for in ordinary methods. The company has therefore no call to make upon the public for general subscriptions to stock or loans, and in this respect its programme is out of the common.

Its make-up will therefore be out of the common. Stock will be allotted privately to individuals whose personal co-operation will be likely to bring wise counsellors about the executive, and will not—for the present at any rate—be otherwise obtainable.

THIS MEMORANDUM.

This memorandum has been specially prepared for those whose co-operation is likely to be solicited, and will, it is hoped, be regarded for the present as personal and confidential. No part of it is to be reprinted under any circumstances without permission of the undersigned.

FURTHER INFORMATION.

Further information, as to the terms of subscription to stock, and as to any other matters involved, may be had upon application to the undersigned.

By order of the directors,

JACOB R. SHIPHERD,
President.

IRA M. TAYLOR,
Secretary.

Dated December 1, 1881. Office of the Peruvian Company, No. 10 Spruce street, New York City.

Printed for Private Use Only.—Not Published.

WASHINGTON, D. C., April 20, 1882.

The Committee met pursuant to adjournment.

Mr. WILLIAM HENRY HURLBERT appeared and was duly sworn.

By the CHAIRMAN:

Question. You are, I believe, editor of the New York World, and a brother of the late General Hurlbut, minister to Peru?—Answer. I am.

Q. Do you know Mr. Jacob R. Shipherd, who has testified in this investigation?—

A. I once saw him.

Q. When did you first know him and what has been the nature and extent of your acquaintance with him since?—A. I have had no acquaintance with him since. He sent, through a lawyer, to my office a sort of message to ask if I would see him. I directed my secretary to send back the reply that if he would say when he wanted to see me I would let him know whether I could see him. Then came another note from a person bearing the remarkable name of W. W. Wigg, I think, who seemed to be a private secretary, stating that, as he understood, I would see Mr. Shipherd—

Q. As a preliminary matter, when was this?—A. This was, I should think, about the middle of December, 1881. I have not the notes with me or I would give you the exact date. I saw by this second note that he wanted to make the impression that I wished to see him, but I had no earthly wish to see him whatever, and I directed my secretary to so inform him.

Q. Without going into those details at present, I desire to call your attention to certain passages in Mr. Shipherd's testimony which the clerk will read.

The clerk read as follows:

"The WITNESS. Senator Blair must have been present; and if it was at the November interview, Mr. Cilley was present. He said, 'We not only write on the lines to a trained diplomat, but we write between the lines, and sometimes we write on the margin, too.' He says, 'I can give you an illustration of that. In the time of George IV, the Duke of York had charge of the diplomatic dispatches, and he was the brother of the King. There was an admiral somebody'—I think he stated his name—'in command of a large fleet at a distance from home, and most critically situated. The turn of a copper might represent the very slight force necessary to precipitate war. It was absolutely necessary that the British Government should not be responsible for any declaration of war. But they did want to fight. So the dispatches were prepared with great care, and in such form that they would read remarkably well when published, and they instructed the admiral, with no end of cautions, that he must not do this, that, or the other thing; and they tied him up so that in effect he could not have fought a battle. After they were all finished the Duke of York took a pencil and wrote on the margin, 'That is all right, Bill, but God damn 'em, give 'em hell.'" The committee will excuse me, but I am giving the Secretary's words *verbatim*. 'Now,' said Mr. Blaine, 'within 24 hours after the admiral received that dispatch, with that marginal note, one of the great battles of history was fought, contrary to his official dispatches, but exactly as his government wanted him to do.'

"Sometime later than that—not many weeks later—I was applied to—and I connect this fact with the other, because the committee will see that it is a connected fact, although it did not occur between me and the Secretary; some weeks after this interview, I had a conversation with an intimate friend of General Hurlbut's, who was complaining to me most bitterly (I think after the publication of the dispatches) that Mr. Blaine had ruined General Hurlbut by leading him on to do exactly what he wanted done, and then publicly disavowing the responsibility for it. The complaint was made by such a person, and under such circumstances, that I felt warranted in repeating this conversation. A most surprising and startled look came into my interlocutor's face as he said, 'Did he say that?' Then I have him. I have in my possession a dispatch, on the margin of which, in Mr. Blaine's handwriting, is written, 'Go it, Stephen.'"

"Now, these facts, I say, made a profound impression on my mind after I received the letter of December 3. I thought I saw how Secretary Blaine could deem it proper to lead a minister—to lead such a man as myself—on a certain line up to a certain point, and then drop him.

"After the correspondence was published I saw General Hurlbut's report upon the Cochet claim, which Secretary Blaine alluded to in his letter to me as an examination and a decision—it is no examination at all; according to his own statement he simply said that he had not been able to find out anything very distinctly about it. In response to that, on the 17th of November, the Secretary says, 'That is very proper; you can drop it and pay no further attention to it.' There was never any examination or adjudication or anything approximating that, either by General Hurlbut or the Secretary of State, as the official correspondence shows. But General Hurlbut sends up all my letters, and the impression made upon my mind was that he had at that time

concluded that there was nobody going to come down and construe that letter of June 2, the way he wanted it construed, and therefore he sends everything up here.

"The Secretary then takes up the same key-note that he struck on the 13th of October, when, in response to my reaching after General Hurlbut's head, he struck me in the face a very strong blow. On the 17th of November he writes to General Hurlbut, 'I have received all these letters, and you need not pay any further attention to this man Shipherd or his claim.'

"On the 3d of December the time had come when the Secretary of State, as I was advised, had found that he could not stay in the Cabinet any longer. The time had come when it was clear to him that neither he nor General Hurlbut could ever be useful in carrying out this scheme in any way, and he said to himself, 'Now, if what has passed between Senator Blair, Mr. Shipherd, and myself, ever comes out, it will be late for me then to undertake to explain it, and I will finish him beforehand. I will put on the records of the State Department a letter in advance, which will show that I never took any interest in the thing at all; that I always knew he was loony and was a fraud, and always knew he was trying to corrupt my ambassador.' This I know now, or sufficiently know it. In a word, I regard that letter of December 7 as just as deliberate an attempt to assassinate a man's character and a great interest as has ever been recorded in history. It was an attempt to assassinate, and nothing else, for the purpose of washing his hands in the presence of the public. That is my opinion, gentlemen, based upon the facts I have suggested.

"Q. Who was this person who had seen the dispatch stating, 'Go it, Stephen'?—A. Mr. William Henry Hurlbert, editor of the New York World.

"By Mr. BLOUNT:

"Q. Do I understand you to say that he said he had the paper himself?—A. I understood him to say that he had the paper in his possession, and that he proposed to use it.

"By Mr. WALKER:

"Q. With that indorsement on the margin?—A. Yes, sir."

Please state to the committee in your own way what you know in regard to the matters here testified to.—A. I will begin by saying, as I have already said, I think, in print, substantially, that the whole narrative by this man of this conversation with me, absolutely and profoundly misrepresents the facts of that interview. I made no complaints to Mr. Shipherd about anything. He had taken great pains to see me, and I had finally granted him an interview, and I let him say what he wanted to say. It was a matter of perfect indifference to me what he thought about anything, or wished about anything. In the course of that interview he complained very bitterly of Mr. Blaine, and seemed to think that Mr. Blaine had treated him very badly, and had deceived him. He gave me a long narrative of his relations with Mr. Blaine, and stated to me substantially a good many of the things which, as I have read in the published reports, he seems to have been stating before the committee in regard to his relations with Mr. Blaine. And he then mentioned this story, inaccurately, as it is given here. The name of the admiral he did not give, but he gave the name of the Duke of York instead of the Duke of Clarence. He did not seem to know that it was the battle of Navarino, and the whole thing was mixed up in his mind; but he had a dramatic way of telling it, and he gave the intonations of Mr. Blaine's voice in doing so, and I thought it quite possible that Mr. Blaine might have told him the story. It struck me, because I had heard an allusion, as coming from Mr. Blaine, to this very phrase of "Go it, Ned," in the old Codrington legend, and that I instantaneously mentioned and said, "that sounds probable enough, because I have heard of Mr. Blaine's using that very phrase in regard to the margin of a dispatch." That is the sum and substance of what I said to him in that connection. I never gave him the faintest claim of reason to suppose that I had ever seen such a dispatch myself, much less that I had ever had any such dispatch in my possession; and you will perceive at once the impossibility of that when you consider, that for me to have had such a dispatch, I must have got it either from my brother, in which case I certainly should not have communicated it to a person like Mr. Shipherd, or that I must have got it from Mr. Blaine, in which case I should not have communicated it to anybody, not even to this honorable committee. So that the story was absolutely and profoundly a misrepresentation. That is all I have to say about that.

Q. And there is no fact within your knowledge upon which it can stand?—A. Excepting, as I tell you, this incident.

Q. At what time was this interview?

The WITNESS. With this man Shipherd?

The CHAIRMAN. Yes.

A. It was, as I tell you, about the middle of December. I came to recollect this from this droll correspondence thus carried on with my secretary.

Q. Is there anything further that you desire to state in this connection?—A. Nothing else unless the committee have something to ask.

The CHAIRMAN. I think, this testimony being brief, with the permission of the committee, we will waive our usual rule, and any member of the committee will be free to put such questions to the witness as he may desire.

Mr. KASSON. There is but a single point, as I regard it, about which Mr. Hurlbert's testimony is important, and that is in respect to the incident which he himself mentioned, and which I will ask him to state fully, as it is the only foundation on which Mr. Shipherd's statement could have been made. (To the witness.) Your remark to him was in the same line of historical incident as you have stated?

The WITNESS. Yes; he was referring, evidently, to the same old Codrington story. My recollection of that, it may be, was not sharp and clear because I was only struck with the dramatic relations of it. The incident was related to me by the Peruvian minister who, of course, was deeply interested in the course of this government towards Peru, and I was very glad to properly get any information from him as to what was going on. And he mentioned to me, as I understood at the time when he told me the story, that in conversation with the Secretary of State about the course of the American Government in regard to Peru, he expressed some dissatisfaction at an apparent failure on the part of the Department of State to do certain things in regard to the situation of affairs on the west coast, which he (the Peruvian minister) had supposed that the Department of State, through Mr. Blaine's personal communications to him of its views, would do; and the impression that I gathered and carried in my mind loosely when I was talking to this person was, that Mr. Blaine had said that on a dispatch to the American minister at Lima, he had intimated his own personal desire that those things in the interest of, and in sympathy with, Peru should be done, which he could not constitutionally have put into the dispatch in consequence of the then situation of the government; that he was, in fact, acting like the Duke of Clarence, and taking an unconstitutional responsibility in order to carry out a personal view, and my impression was that that had been done in a marginal note; that was my impression.

Q. If I understand you, then, it was an incident in your mind that had been related to you by the Peruvian minister in a general conversation?—A. Yes, that was all; nothing more than that. I will also say that, wishing to be exact about this, since I came to Washington I have seen the Peruvian minister and asked him if he could remember the date at which this interview between himself and Mr. Blaine occurred, and anything more accurate about it. His impression is that it occurred during the week that the President was removed to Long Branch; but he said that he certainly did not intend to convey to me the idea that Mr. Blaine had told him that he had made such a marginal note on a dispatch; that he told me himself.

Q. So that the gist of it is that Mr. Shipherd's statement exclusively rests upon an incident which you mentioned as having yourself derived from another person?—A. Absolutely.

Q. Of some marginal note on a dispatch?—A. Yes, sir, absolutely.

Mr. KASSON. I have nothing further to ask of the witness.

The CHAIRMAN. Does any other member of the committee desire to ask the witness any questions?

Mr. BELMONT. I would like to ask the witness a question or two. (To the witness.) Do you remember the conversation between the Peruvian minister and Mr. Blaine, as related to you by the minister, in connection with this incident?—A. No, I cannot say that I do; it was the incident itself that I remembered and not the details at all.

Q. Will you relate your understanding of the incident?—A. I have already stated, I think, substantially, my first impression as to the incident when it was alluded to; that there had been a dispatch on which such a marginal note had been pencilled; that impression was in my memory. It was a thing which I would have been very unwilling to testify about, because it was simply an impression, and I did not attach a great deal of importance to it at the time, except as illustrating what I thought, possibly, the methods of the Secretary of State; but it was brought back to me by this narrative, and so I alluded to it, but nothing more.

Q. Did you understand that the Secretary of State had said to the Peruvian minister that he would send such a dispatch under certain conditions, or had sent one?—A. I really should be unwilling to make any statement. My general impression would be, undoubtedly, that he had sent it, if I had been asked by any person gravely at the time, and not under such circumstances as these. But I should only have said that under all reserves, and as my impression simply; I should have been very far from intimating it as a fact which I had any cognizance of.

Q. What were your relations with Mr. Blaine?—A. My relations with Mr. Blaine originated entirely out of the situation created for the country by the attempted assassination of President Garfield. They were friendly—personally friendly—and I saw him on several occasions in reference to the policy of the government in Peru and its relations with my brother, who was there as minister; that was the sum and substance of them.

Q. Whose policy do you refer to?—A. The policy of President Garfield.

Q. What was your understanding of that policy?—A. My understanding of the policy of President Garfield which my brother was sent to Peru to carry out was this: I understood him to be sent there to carry out, or to continue to give solid effect to, the policy begun under Mr. Evarts, which came to grief in the conferences of Arica through Mr. Christiancy and Mr. Osborn; to bring about peace on the west coast of South America without the dismemberment and spoliation of the Peruvian territory, and through the influence of the United States.

Q. Did Mr. Blaine convince you that he was carrying out that policy of President Garfield?—A. I cannot say that he did.

Q. Why did he fail to convince you of this?

Mr. KASSON. May I ask the chairman if we are to go largely into this kind of inquiry?

Mr. BELMONT. I wish, if possible, to throw more light upon the question about which we are inquiring, and to show whether certain instructions were sent, and, if so, whether there was any understanding by marginal note, or by conversation, or in any other way, that the policy was different from that which appeared in these dispatches; that is the importance of the understanding to which Mr. Hurlbert has testified.

Mr. KASSON. I doubt whether we can go into the relations of Mr. Blaine with Mr. Hurlbert, or into the policy of President Garfield.

The CHAIRMAN. I think anything that would throw light upon the substance of this inquiry would be permissible; but of course we can hardly expect to go into the question of the whole South American policy under it.

Mr. BELMONT. Of course not. (To the witness.) I was asking you why Mr. Blaine failed to convince you that such was the policy?

A. Well, he failed to convince me *because* he failed to convince me. He failed to convince me, I should say, through the general impression he made on me of his ways and methods. My relations with him were agreeable; he was always charming and attractive, but he impressed me as a very engaging, attractive, political flirt, much more interested in making engagements than in committing matrimony. In a general way I can say that.

Q. So that this incident did not appear unnatural to you?—A. No; I cannot say that it did.

A. And you believed that it took place?—A. No; I cannot say that. Belief is a serious matter, which is founded on evidence and examination. I had that impression.

Q. When was your last interview with Mr. Blaine?—A. It was just before, or not long before, the first publication of dispatches between the State Department and the minister in Lima; that must have been somewhere about the beginning of December, or perhaps the middle of December—the 10th, or the 12th; I do not remember the dates exactly. It was just after Mr. Frelinghuysen came into the State Department. I refer to the first dispatches published in the newspaper press, about the 12th or 15th of December.

Q. In that publication there was a dispatch disapproving of your brother's course?—A. There was.

Q. What was the first point on which you found that disapproval expressed?—A. On one of the most important acts of his short mission; not an official act but an extra-official act made public through no action of his—the memorandum given by him to Admiral Lynch, the Chilean commander, of a conversation that Lynch had sought of him at the legation at Lima.

Q. I believe that dispatch was dated November 22?—A. The dispatch disapproving? Yes, sir.

Q. Mr. Blaine received from General Hurlbut a copy of the Lynch memorandum on the 27th of September?—A. Yes, sir; I think so. He could very easily have done so.

Q. His next dispatch was a telegram to General Hurlbut, addressed on the 27th of October, which made no reference to the Lynch memorandum. His next was a telegraphic dispatch on the 31st of October, in which General Hurlbut was directed to continue to recognize the Calderon government, which I suppose was a substantial approval of his course as minister up to that date?—A. Undoubtedly.

Q. Did you see Mr. Blaine and converse with him in the interval between September 27 and November 22?—A. I did, more than once.

Q. Did he give you any reason to suppose that he disapproved of the course of the government in Peru during that interval?—A. Not the slightest.

Q. The next dispatch from Mr. Blaine to his minister in Peru, after the one of October 31, was that of November 17, in which there is no disapproval of the Lynch memorandum. The next is dated November 19, in which there is no disapproval of the Lynch memorandum. The first disapproval of the Lynch memorandum, then, is dated November 22. Have you any information from General Hurlbut as to his understanding of the effect of the dispatch of November 22?—A. I received several letters from him in which he alluded to it. I ought to say, of course, as a personal friend of Mr. Blaine's and in political sympathy with Mr. Blaine, my brother had a degree of

confidence, no doubt, in Mr. Blaine which I never had, as I had no personal acquaintance with him before this mission, and as I had always entirely disapproved of and was opposed to all his political methods. But my brother certainly expressed to me something like astonishment, and something not unlike indignation, at the tone of that dispatch, in several letters.

Q. He expressed that in a letter?—A. In several letters.

Q. Have you any of those letters?—A. I have one here with me in which he alludes to that.

Q. Will you read such portions of it as allude to this matter?

The WITNESS. Do the committee wish me to read this? I see an allusion here to this person Shipherd which I have no objection to read; it is one of a great number of that sort. Shall I read the whole of it?

Mr. BLOUNT. Is there anything private in it?

The WITNESS. Not in that part of it. The language is a little strong as you may say. It is dated Lima, 29th of December, 1881, just after the arrival there of Mr. Trescott and his leaving for Chili. My brother writes, "The Chilian papers are full of that infernal Shipherd and his pretenses. They have been kicked out of this legation and out of the State Department, but he is an indefatigable nuisance as I have written you before. I hope Sam. Randall will call for all papers in the Department in reference to him and his affairs. I have sent all his letters back to the Department and I anxiously desire that the correspondence be made public. I have fears, I hope not well-grounded, that our government means to slide out of the American position here."

"My personal talk with Blaine and Garfield will not appear in any official correspondence, but it was the motive for my action. I think they will throw me overboard unless Congress backs up the American line I have taken. Personally, I care little about it, but I must say that in Blaine's letter of 22d November to me there was a manifest disposition to hedge."

By Mr. BELMONT:

Q. Do you know anything of the verbal instructions to the minister?—A. Only what the minister himself, before leaving for Peru, told me of them.

Q. What was their tenor?—A. Their tenor was that substantially he was to have elastic powers to carry out and give effect to the policy to which I have already referred as begun under Mr. Evarts, of bringing about peace on the west coast by the exercise, in all legitimate and effectual ways, of American influence, and preponderating over all other influences there to induce the republics to cease fighting and to prevent the spoliation of Peruvian territory and the dismemberment of Peru, that being made the precedent condition of negotiations.

Q. Did you consult with Mr. Blaine upon the subject of the *Crédit Industriel*?—A. No; I never consulted with him about it. It was alluded to, I think, on two or three occasions.

Q. Will you state what was the plan of the *Crédit Industriel*?—A. I should say it was better stated in this document (Senate Ex. Doc., No. 79) than I could possibly state it. It is a matter of public record, and has been long discussed by France, the United States, and these South American states. As I understand it, the *Crédit Industriel* was a very powerful French organization representing the French and continental bondholders of Peru, interested in extensive business with Peru, and which was disposed to enable Peru to pay any financial indemnity which might be fixed upon in negotiations for peace, in order to save Peru from the necessity of ceding her territory. That, I think, in general terms, was the programme, certainly as I understood it, of that society; and, as I understood it, that was the relation of that company to this question.

Q. Have you any knowledge of any personal relations between the Secretary of State and any of the agents of the *Crédit Industriel*?

The WITNESS. By personal relations do you mean personal acquaintance and discussion?

Mr. BELMONT. Yes.

A. I know that one gentleman whom I believed to be the American counsel of the *Crédit Industriel* had such relations with Mr. Blaine, and saw him and conversed with him on the subject.

Q. Who was that counsel?—A. Mr. Robert E. Randall.

Q. Did you gather from that gentleman that Mr. Blaine approved of the plan of the *Crédit Industriel*?—A. In general terms I should say that I did.

Q. Did you understand that a part of the plan of the *Crédit Industriel* was to obviate the necessity of any cession of territory by Peru?—A. Distinctly.

Q. Do you remember any particular instance going to show that Mr. Blaine approved of this part of the programme of the *Crédit Industriel*?

The WITNESS. You mean the obviating of the necessity of the cession of territory?

Mr. BELMONT. Yes.

A. Yes; I remember one interesting incident in connection with that.

The CHAIRMAN. Is this knowledge that you are calling for derived from statements of Mr. Randall?

Mr. BELMONT. No; I am asking Mr. Hurlbut if he knows of his own knowledge about it.

The CHAIRMAN. I was going to suggest that Mr. Randall has been subpoenaed and his statement will be taken.

By Mr. BELMONT:

Q. Do you say that you recollect any incident?—A. I recollect an incident which made considerable impression on my mind, in consequence of the person whose name was used in connection with it as having expressed a very strong opinion against the cession of territory by Peru, being made a precedent condition of negotiations.

Q. Will you state what that incident was?—A. The incident was that a letter from an extremely eminent American expressing that feeling was read to Mr. Blaine and listened to by him with great interest and apparent warm approval.

Q. Have you any objection to stating the name of that eminent American?—A. None whatever, for I consider the position taken in the letter very creditable to him. It was General Grant.

Q. Have you any copy of that letter?—A. I have a copy of it, because I was so much interested in it that I asked for a copy of it, which was given to me.

Q. Will you produce it?—A. I have brought it here and will read it if the committee desires.

Q. Please do so.

By Mr. WALKER:

Q. To whom is that letter addressed?

The WITNESS. To the Peruvian minister.

By Mr. BELMONT:

Q. Did Mr. Blaine see this letter?—A. That is the very incident which, as I tell you, attracted my attention.

Q. Allow me to inquire; is this the same gentleman who was supposed to have seen the marginal note before referred to?—A. Yes, sir; the gentleman who narrated that incident to me.

Mr. BELMONT. Very well, please read the letter.

The WITNESS. There are some personal matters referred to in the letter, but I expect I might as well read the whole of it (reading).

NEW YORK CITY, *November 17, 1881.*

[Private.]

MY DEAR MR. ELMORE: I am sorry I was not in when you called on the 13th. As soon as I returned to the house I received your letter and accompanying papers and expected to see you at five o'clock.

My not being in, a verbal message was sent to you to call at that hour. You may not have received it. Since you were here I hear that President Calderon has been carried off to Chili as a prisoner of war. I hope this is not true. What can I say or do beyond expressing my sympathy for Peru in her present troubles, and expressing the hope that she may yet come out of them with honor?

It seems to me, however, proper and important that the United States should step in now and say to Chili that she cannot oppress or despoil Peru of territory. She may demand indemnity and security.

With great respect, your obedient servant,

U. S. GRANT.

P. S. I return the paper you sent to my house.

U. S. G.

By the CHAIRMAN:

Q. What is the date of that?—A. The 17th of November.

By Mr. BLOUNT:

Q. That is addressed to the Peruvian minister?—A. Yes, sir.

By Mr. WALKER:

Q. I understand this to be a copy of a letter addressed by General Grant to the Peruvian minister, the original of which was shown to yourself?—A. I saw the original.

Q. And of which a copy was made by you?—A. No; made for me.

By Mr. BLOUNT:

Q. Under the approval of the Peruvian minister?—A. Yes, sir.

Q. Approved by him?—A. Yes, sir; and another copy of this letter or the original, I think, was shown to Mr. Blaine.

By Mr. BELMONT:

Q. The plan of the Crédit Industriel being to obviate the cession of territory, you considered, then, that this letter having been shown to Mr. Blaine, and the fact being known to Mr. Randall, and Mr. Blaine having approved of the policy indicated in the letter, that that was an incident which would show that Mr. Blaine also approved of that part of the programme of the Crédit Industriel?—A. Certainly; that would be my inference, of course.

Q. You say the date of this letter was the 17th of November?—A. Yes, sir, the 17th of November.

Q. Was not that before, or just before, the departure of the special mission of Mr. Trescot?—A. Yes, sir; the date of the special mission of Mr. Trescot I get from this book (referring to Senate Ex. Doc. No. 79). I find here a telegram from Mr. Blaine to General Hurlbut, dated Washington, November 26, 1881, as follows:

“Hurlbut, minister, Lima, special envoy extraordinary leaves Washington for Peru immediately. Continue recognition of Calderon government.

BLAINE.”

Q. Have you any knowledge of the relation of the Calderon government to the Crédit Industriel?—A. I have no knowledge except what I gather from—in fact from this book, I may say. It was made apparently a question to my brother in connection with a dispatch which he received, and which came as near angering him, I think, from my private correspondence with him, as anything which he received while in Peru, and certainly astonished him. (Referring to Senate Ex. Doc. No. 79.) Yes, here it is. On the 27th of October, this dispatch was sent by Mr. Blaine to General Hurlbut:

“WASHINGTON, October 27, 1881.

“HURLBUT, Minister, Lima:

“Influence of your position must not be used in aid of Credit Industriel, or any other financial or speculative association.

“BLAINE.”

General Hurlbut writes on the 2d of November that he was surprised by receiving this telegram, and that he immediately answered it:

“It has not been; it will not be. I do not know the reason why such a warning should be sent me.”

He then wrote at once, the same date (November 2), I see, to President Calderon, as follows:

“UNITED STATES LEGATION,
“Lima, Peru, November 2, 1881.

“Will you do me the favor of giving me the actual date of the conclusion of the contract between your government and the Société du Crédit Industriel, for the information of my government.

“I have the honor, &c.,

“S. A. HURLBUT.

“His Excellency F. GARCIA CALDERON,
“President, &c., &c.”

To which he received this reply:

Mr. Calderon to Mr. Hurlbut.

“LIMA, November 2, 1881.

“S. A. HURLBUT, Esq., &c., &c.:

“MY DEAR SIR, AND DISTINGUISHED FRIEND: I have to state for your information, in reply to your note of to-day, that the contract between this Government of Peru and the Société du Crédit Industriel, was signed in Paris on the 7th of January, 1880, and was modified by the government over which I preside in the month of March, in the present year, 1881. This is all that has occurred in relation to this matter.

“I repeat to you the assurance of my most distinguished consideration, subscribing myself your true friend and obedient servant,

“F. GARCIA CALDERON.”

Q. Do you know anything about a contract of the *Crédit Industriel* with Morton, Bliss & Co., in the year 1881?—A. I know that I saw in a Boston paper—the Boston Advertiser, I think—such a contract published, and that I had it republished at once in *The World* as a matter of public interest.

Q. Do you know whether it was executed in New York or in Paris?—A. I do not.

Q. Did you have any correspondence with General Hurlbut in regard to that contract?—A. Not at any time or in any form.

Q. Do you know whether by its terms its performance was made contingent on the mediation of the United States in Peru?—A. I have not the matter in mind this moment, but it could be seen by referring to it as printed; my impression is that it was.

Q. Did you ever ask Mr. Randall for any particular information concerning that contract?—A. At the time when I published it I sent a reporter to notify him about it, and he made some statement, which I published. I attached very little importance to it, because it seemed to me to be a private transaction which did not bear on public policy at all, and I did not concern myself with it.

Q. How do you account for the reference to the Peruvian Company in the published correspondence?—A. Do you mean this published correspondence (referring to Executive Document No. 79)? A curious light seems to me to be thrown on that by dates. I should account for it on the whole by the pistol-shot of a man named Gniteau.

Q. What do you mean by that?—A. I mean that in conversing with my brother about his mission before he went to Peru, I do not remember any allusion to the Peruvian Company at all excepting his asking me if I had ever heard of this person Shipherd, and stating to me that he had been requested, not by Mr. Blaine (I am glad to have the opportunity of saying that), but by President Garfield, to see this person and to look into some claims of his. I told him I never heard of the man and knew nothing about him. When he came back from his home in Illinois to sail for Peru he brought me a couple, or two or three, I do not remember how many, letters, addressed to him in Illinois by this individual, one of which was, to a man of my mind, a most open and brazen offer of bribe.

MR. BLOUNT. They have been published.

THE WITNESS. Yes; they are published here (referring to Executive Document No. 79). These letters he said he would send to Washington, but I am glad to have the opportunity of stating that he did not ever do so; that is due to me; I advised him not to do that. He was very angry about it, and his impulse was to do it, but I advised him not to do it. I said, "You told me that this person was recommended—I will not say recommended, that is too strong a word—but you were asked by the President of the United States to look after this man and his concerns. Well, to me, on the face of it he is a scamp, but I am a Democrat, and I am not a minister of the United States. But you are a Republican and a minister of the United States, and I should advise you to take these letters with you to Peru, to go through all the bases of this man's claims, whatever they may be, when you get there, in the archives of the legation, to get to the bottom of this thing, and then to send home to the government all that you find about him from the beginning to the end, including this note." That advice he took. I am not sure that it might not have been better for Mr. Blaine if I had not given him that advice, because I am glad to say that, in all my intercourse with Mr. Blaine, I never saw the slightest reason to doubt that if he had had a communication made to him by my brother before he went to Peru of the contents of that scandalous little note, he might possibly have never entertained Mr. Shipherd, more or less unawares, at subsequent periods.

I do not know what influence Senator Blair or other persons may have had in inducing him, notwithstanding that, to entertain Mr. Shipherd, but the impressions I gathered of Mr. Blaine were, and I am glad to have an opportunity of saying it now, although I do not approve of his political policy, that I never saw or heard anything in my relations with him which led me to doubt that he would have acted differently from what I should if I had been in his place and such a note from such a person had been sent to me. But on the day my brother sailed for Peru President Garfield was shot. Up to the date when my brother sailed for Peru the policy of this government towards Peru was the policy of President Garfield, absolutely, and he represented him.

He left my rooms at 10 o'clock in the morning, or, at all events, a few moments before I received by telephone the news of this crime from Washington, and he sent me the news from the steamer of the rumor of the death of the President, and asked what I should advise him to do. It was an extremely trying situation, but I sent him back word that he was a soldier and he knew his duty; that whatever had happened to his President he was on his steamer and he should go on his mission. And he went. Now, I find that between the date of his sailing and the 4th of August he gets no communication whatever from the State Department; that on the 4th of August he gets a communication from the State Department in which, if I am not mistaken, there is nothing whatever said in regard to the public objects of his mission [referring to Ex. Doc. No. 79]. Yes; I do not see that anything is treated of in this dis-

patch of the 4th of August excepting the Cochet and the Landreau claims. I do not find that in what is called the Peruvian Company the Landreau claims had any part before the time of the shooting of President Garfield. This is the first communication from the State Department to the minister in Peru after the shooting of President Garfield. The Cochet claims are incidentally alluded to, and the main object of the dispatch is devoted to the Landreau claims.

Q. Have you any knowledge or information about the ownership of the Landreau claim?—A. Knowledge, perhaps not; but I have information about it which is the reason of my attaching importance to this dispatch and to the significance which I think I see in it. The Landreau claim is about eight years old, I think, in the history of our diplomacy. It turned up first, according to my information, in the second administration of President Grant, in the year 1874. It appears then to have been urged on the State Department, or pressed upon its attention, through the efforts of certain more or less well-known persons in this city, I think.

Q. Do you know who those persons are?—A. I have been informed that the persons chiefly active at that time in pressing that claim were a man named Peter Hevner, a resident, I think, of Philadelphia; Ex-Governor (I think they called him) Henry D. Cooke, of the District of Columbia; Mr. Jay Cooke, and a Mr. Joseph Carter, I think, of Philadelphia.

Q. You say Mr. Jay Cooke?—A. Yes; Mr. Jay Cooke.

Q. Are not these the gentlemen who are interested in what is called the Kilbourn case, which is now pending?—A. I believe they are the same persons.

Mr. BELMONT. And it remains to be seen whether this will be a repetition of that farce.

The WITNESS. Now, as to Mr. Shipherd himself, as I tell you, he played a very small part in my mind in connection with this business; not nearly so large a part as he seems to have played in his own mind in connection with this matter. He plays a very small part; that is, if he represents the Cochet claim, which I understand is the origin of him in this dispatch of the 4th of August, and the Landreau claim, as I told you, is the basis of that thing.

Q. You think these are the gentlemen who are behind him, although he himself, as you say, plays a very small part.—A. Well, I do not know. In one of my brother's letters to me he was very anxious (as was indicated in the extract which I have read, and which is one of very many letters) to get here, and he wanted me to see our Democratic friends about it, and named Mr. Randall; and as he knew as a Democrat I was not indisposed to make harmony in my own family by disturbing the other side, he was anxious to have them bring about a committee of investigation, if possible, so as to get at this thing; and in alluding to that in one of his letters he said: "I shall make short work of Shipherd and the people who are behind him." He never was more explicit than that.

Q. And your information is that these are the people behind him?—A. No; that is not my information; I do not say that; that is my inference. At all events I think it will bear investigation and inquiry.

Q. Did you ever hear that Mr. Corbin at one time owned half of the Landreau claim? I mean the brother-in-law of General Grant.—A. Yes, sir; I have heard that.

Q. You say that the Landreau claim was first brought to the notice of the government during General Grant's second administration?—A. Yes, sir; during his second administration.

Mr. BLOUNT. Will you allow Mr. Hurlbert to state where he got the information that Mr. Corbin was part owner of this Landreau claim?

The WITNESS. I should have to search my mind to tell you; I cannot at present say. I should be very glad to recollect it myself.

Mr. BLOUNT. As a matter of course any vague expressions do not throw any light on it.

The WITNESS. I did not bring it forward in that way at all.

Mr. BLOUNT. I am not complaining of you at all; but I wanted to satisfy myself as to whether you got it from high sources, in which case it would have more significance than if you did not remember anybody's communicating it to you.

The WITNESS. I do not at this moment remember.

The CHAIRMAN. It is the policy of the committee to give the widest liberty possible in the course of this examination; but at the same time we desire to keep as near actual knowledge as we can.

The WITNESS. Certainly.

Mr. WALKER. I understand the witness to have been stating inferences rather than information.

The WITNESS. When I have so defined it, yes. I ought to go on to say in regard to this matter—as I have dwelt on the importance of this Landreau claim, and have already stated why it attracted my attention—that of course, as a journalist, independent of my interest in my brother, I tried to find out all I could about it, and to understand for myself all its relations to the matter. Mr. Thomas, who was the

United States minister in Lima at this time (in 1874), as I have been informed, took a great deal of interest in assisting the people there in looking into this matter of the Landreau claim and finding out what it rested upon and amounted to; and after his death a minister by the name of Mr. Richard Gibbs was sent out there, and what I have heard on pretty clear authority is that a leading lawyer in New York drew up a kind of brief about this Landreau claim, which was given to Mr. Gibbs when he received his instructions and went out; so that it seems to have been pretty seriously moved upon at that time.

By Mr. BELMONT:

Q. Do you know whether anything was done about this claim during the administration of President Hayes?—A. No; I have conversed with Mr. Evarts about it, but he does not seem to have any definite notions on the subject at all.

Q. Then, so far as it appears, it was never considered again until the 4th of August, so far as public documents indicated it.—A. I cannot find it revived in any serious solid form except in this dispatch of the 4th of August.

Q. And after the interview of Mr. Shipherd with Mr. Blaine?—A. Yes; that is so. Mr. Shipherd does not seem to have known Mr. Blaine even, I think, until after this crime of his congener, Guiteau. My recollection is quite distinct, as I have told you, that the person was brought to my brother's attention not by Mr. Blaine, but by President Garfield.

Q. In your intercourse with the Peruvian minister you have, I suppose, found him a very discreet person?—A. He is a very accomplished, cautious, gentlemanly diplomat, very anxious not to do indiscreet things, or make rash committals.

Q. And the letter which was written to him by General Grant, in which it is stated that it is about time for the United States to step in, together with his version of the incident in regard to the marginal note, do you consider as throwing any light upon the policy indicated in the dispatches sent to General Hurlbut?—A. I do not know that I quite understand that question. The committee are as good judges as I am, or better, of what light would be thrown by these things together upon the objects of their investigation. I think that the letter of General Grant shows that he approved the policy which certainly I have always approved in the strongest possible manner, and which I think is the traditional policy of my own party that if things are to be settled on this continent they should be settled by Americans.

THE CHAIRMAN. I do not like to interrupt you, Mr. Belmont, but it seems to me that the answer of the witness is very pertinent. It is hardly necessary to call on a witness to swear either to opinions or conclusions concerning which we are charged to determine. Any fact within his knowledge which will enable us to form an opinion is another thing.

Mr. BELMONT. What I wished to arrive at was the explanation of the account given by the Peruvian minister about what has been termed the marginal note.

The CHAIRMAN. I do not desire to add any suggestions to narrow the inquiry, at least upon any fact upon which we can base an opinion.

By Mr. BELMONT:

I will ask Mr. Hurlbert a question; he may have answered it, but perhaps I did not comprehend fully his answer. In referring to a certain dispatch sent by Mr. Blaine to the American minister at Lima, the Peruvian minister speaks of the body of the dispatch, and says that there were certain things the Secretary wished to say in it, which he had not the constitutional authority to say, and that on the margin of that same communication he penciled his personal opinions and wishes in the matter. Did you understand from the Peruvian minister that the Secretary of State was desiring the American minister at Lima to do what he regarded an unconstitutional thing for himself to do?—A. No; I hardly drew that inference. My inference was that he was rather explaining to the Peruvian minister why he could not do, except in a marginal note, unconstitutionally, what he wanted to do. That was the short sum and substance of what I supposed was the meaning. But of course this must have been in an informal conversation, not a formal conversation.

Q. Do you know how the letter which you have read from General Grant to the Peruvian minister came to be written?—A. I think it is explained in the letter itself: that the Peruvian minister called upon General Grant to see him in relation to the situation of affairs in his country.

Q. I beg pardon, that is true; it was simply an opinion brought about in that way? A. Yes, sir. Perhaps I should say (I do not know whether it is proper or improper, but it would hardly be improper to say) that I have always understood from the Peruvian minister that he had an old acquaintance with General Grant; that he was Peruvian minister in China, I think, when General Grant visited that country, and was able and very glad to show him civilities at Peking at that time. At all events, he seemed to be on very friendly and courteous terms with him.

Mr. BLOUNT. I supposed that it came about in some such way, but I was not sure that it appeared distinctly.

By the CHAIRMAN:

Q. The Peruvian minister was Mr. Elmore?—A. Yes, sir.

Q. Are you able to fix, and will you please fix, as near as you are able to, the day and place of this interview in regard to the marginal note.—A. As I think I have already stated to the committee, I have seen the Peruvian minister since I came here this time to see if he could enable me to do that, and his own impression is that it occurred about the time the President was removed to Long Branch.

Q. And where?—A. That I did not ask him?

Q. Whether in Washington or New York?—A. That I could not tell. He really found some little difficulty in fixing it in his own mind, and of course I was entirely unable to do so.

Q. And you are unable to fix the place now?—A. Yes, sir; absolutely.

Q. Did you understand from him that he had seen the dispatch, or a copy of it, with this marginal note upon it?—A. That was my original impression.

Q. Since your recent interview with him, what is your present impression as to that?—A. Of course my present impression is the last impression which he has given me.

Q. I do not know that you have stated that.—A. Yes, I think so; that this was said to him by Mr. Blaine as illustrating the only way in which it would have been possible for him to do, or had been possible for him to do, what he wanted to do in relation to Peru; in other words, that the situation created by the wounding of the President (Congress being in recess) would leave a Secretary of State, who wished to influence in such a direct way as that the foreign policy of the country, no other means of doing it than the unconstitutional means which were adopted in the matter of the battle of Navarino by the Duke of Clarence. That was a historical illustration to me of the situation created for an American Secretary of State by the peculiar situation of the government.

Q. But you never understood from him that Mr. Blaine submitted to him the dispatch, or copy of it?—A. I did not understand that from him. I think I have already stated that.

Q. Then the only information which he received from Mr. Blaine was what he stated to him in regard to it orally?—A. That is the impression which he gave me now.

Q. Did he indicate at what time that was?—A. Only as I have said before; as nearly as he could. It was about that week, he thinks.

By Mr. LORD:

Q. Did you understand, or get the impression, from the Peruvian minister that there was a dispatch from the Secretary of State to our minister at Peru, your brother, on which there was a marginal reference somewhat contradictory to the body of the dispatch?—A. As I tell you, that was my original impression; the general impression left on my mind. It was hardly formed; it was simply a general impression from the result of the conversation; because you must observe that it was an incidental narrative that he was giving me in talking about other things of the attitude of the government.

Q. Did you subsequently have any information from your brother as to that?—A. Never anything at all. The truth is, it never came up in my mind again until it was revived by this narrative of that person; that is the plain truth of that.

By the CHAIRMAN:

Q. Just in that connection, let me ask, has your impression been confirmed by your recent interview with the Peruvian minister?—A. No; certainly not.

Q. It has not?—A. No.

Q. Has it been removed by that interview?—A. Well, yes; I should think I ought to say it has been removed.

By Mr. BLOUNT:

Q. Let me ask you if the lack of constitutional power referred to lay in the condition of the President at that time and the inability of the Secretary of State to confer with him?—A. Yes, sir.

The CHAIRMAN. Is that all; are there any further questions? I would state that after consultation with some members of the committee, not with all, I have concluded to adjourn this hearing until half-past ten o'clock on Monday next. There will be a business meeting of the committee to-morrow at half-past ten, or rather, as it has been suggested that the House now meets at eleven o'clock, at ten o'clock to-morrow. On Monday it is expected that Mr. Blaine and other witnesses will appear. I am not aware at present that we shall require Mr. Hurlbert's further attendance; if we do we will notify him.

The WITNESS. I shall be happy to respond.

Mr. BELMONT. I have a list now of the correspondence to be called for.

Mr. BLOUNT. I would suggest that Mr. Belmont bring that matter up to-morrow, as we have now passed beyond the hour of the meeting of the House.

The committee then adjourned until Monday, the 24th of April.

WASHINGTON, D. C., *Monday, April 24, 1882.*

The committee met pursuant to adjournment.

The CHAIRMAN. I desire to state to the committee that I anticipate there will be matters of importance coming up in the House this morning, which may make it desirable that the members of the committee should be present. Mr. Blaine is here, however, ready to make his statement, and, if it will be agreeable to him, we might go on with the hearing as far as we can.

Hon. JAMES G. BLAINE was then duly sworn.

Mr. BLAINE. Of course I desire to submit myself to such direction as the committee shall indicate, but, if it is the pleasure of the committee, I would like to proceed first to make a general statement in regard to these matters, and afterwards submit myself to any questions that the committee may choose to address to me.

The CHAIRMAN. I was going to suggest that myself; that will, no doubt, be acceptable to the committee. I will first, however, put a few preliminary questions. (To the witness.) You were Secretary of State under President Garfield's administration, and for a time under the administration of President Arthur?—A. Yes, sir.

Q. Do you know Jacob R. Shipherd, who has testified in this investigation?—A. I do.

Q. Have you read the testimony purporting to have been given by him before this committee?—A. Yes, sir; and I have tried to understand it.

Q. The committee may desire to interrogate you in regard to correspondence to and from the State Department, and also in regard to various alleged interviews which Mr. Shipherd claims to have had with you, but, as suggested, I understand they prefer at present to have you make your statement in your own way, taking up the matters in such order as you may desire.

The WITNESS. I would like now to ask you, Mr. Chairman, if it be the pleasure of the committee, that the resolution of the House under which you are acting may be read.

The clerk, by direction of the Chairman, read the resolution, as follows:

"Whereas it is alleged, in connection with the Chili-Peruvian correspondence recently and officially published upon the call of the two Houses of Congress, that one or more ministers plenipotentiary of the United States were either personally interested or improperly connected with business transactions in which the intervention of this government was requested or expected; and

"Whereas it is further alleged that certain papers in relation to the same subjects have been improperly lost or removed from the files of the State Department: Therefore,

"*Resolved*, That the Committee on Foreign Affairs be, and they are hereby, instructed to inquire into the said allegations, and ascertain the facts relating thereto, and report the same, with such recommendations as they may deem proper, and they shall have power to send for persons and papers."

The CHAIRMAN. There is also a supplementary resolution which the clerk will read. The clerk read as follows:

"*Resolved*, That the Committee on Foreign Affairs be directed to demand from Jacob R. Shipherd, of New York, copies of all correspondence between himself and any person or persons whatsoever, and all papers and other evidence in his possession tending to show what said Shipherd did or attempted to do to enforce the claim of the Peruvian Company or to induce the United States to enforce this claim against Peru."

Mr. KASSON. If agreeable to Mr. Blaine, I would suggest, if it will not interfere with the order in which he proposes to make his statement, that he first disposes of the matter touching the papers referred to as being abstracted from the Department of State.

The WITNESS. I was going to take it in that order. To begin with, Mr. Chairman, I never saw the alleged papers in the State Department in my life, neither before this inquiry started nor since. They were papers of a character that would not naturally be brought to the attention of the Secretary of State. I never knew there were any such papers in the Department, nor that there were any such addressed to it, until after Mr. Shipherd was introduced to me by Senator Blair, in the latter part of July. He then referred to the fact that he had addressed some letters to the President which had been referred to the State Department. I never inquired about them, I never saw them, and up to that time knew nothing of their being there; and prior to the introduction by Senator Blair of Mr. Shipherd to me, I had never heard the man's name mentioned. When Senator Blair came to me on Monday, July 25, and said that he desired an interview for a gentleman named Shipherd, I never had heard the name before, and said to him, "You must mean Shepherd," and he said, no, it was spelled "S-h-i-p"; that fixed it in my mind, for I never had so much as heard of the name before the 25th of July.

I will state, in further explanation, that correspondence that comes to the State Department—indeed all correspondence—is first sent to the office of the Chief Clerk

who assorts it. The consular correspondence goes to the office of the Third Assistant Secretary of State, and the diplomatic correspondence either to the First Assistant or Second Assistant Secretary, or to the Diplomatic Bureau direct. The Secretary of State would only have his attention called to important dispatches—to dispatches on leading questions of policy, and not to matters of detail. It would be utterly impossible (and gentlemen of the least experience will see how absurd it would be to suppose) that the head of any one of the great departments of the government could have the least personal cognizance or overlook of each individual paper that comes into the department, much less of a matter of such entire trashiness as the matter sent there by Mr. Shipherd. And so far as the investigation as to what became of that matter is concerned, I will state, if you will permit me, that it was scarcely fit for the waste-basket—the whole of it. The Chief Clerk would have been acting in strange contrast to his ordinary prudence if he had attempted to interrupt the attention of the Secretary by laying that on his table. I never heard of it at all, and I did not know Mr. Shipherd's handwriting until in the autumn when, after General Hurlbut returned his correspondence to the Department, the Assistant Secretary of State, Mr. Hitt, brought it to my house in the morning and said: "Here is a pretty mess of stuff from South America," and exhibited these letters to me. I said to him: "Are these in Mr. Shipherd's handwriting?" He said he did not know his handwriting, but they appeared to be original letters, and not copies. Up to that time I had not seen Mr. Shipherd's handwriting. Further, as to Mr. Shipherd's assumed frequent interviews with me, it would appear from the representations made by him to the committee that we had spent the whole summer together.

Mr. KASSON. If the witness will allow me, I think he can dispose of the whole matter in regard to these lost papers, if he will simply state now, in reply to this question: "Do you know how they came to be missing from the files of the Department?"

The WITNESS. I never heard a word of their being missing at all. I did not know a thing about it. I had as little knowledge of it as an unborn child. I never heard a word of it, and it appears from the testimony that they had never been addressed to me at all. I suppose they went as did similar matters of routine, which were daily sent from the White House to me. I had no recollection of them; not the least in the world. But as there was some chance that possibly they might have been put in with some documents that I had brought to my house, I instructed my private secretary to search every nook and cranny for them (and I may say that he is a very careful, close-observing business man), but he could not find them, and knew nothing of them.

In regard to my other interviews with Mr. Shipherd, I will state that he was introduced to me on the 25th of July by Senator Blair in the evening of that day, when I had a very brief interview with him. Instead of its extending to 11 o'clock in the evening, as he states, I should say that it was only ten to fifteen minutes long. I excused myself on account of having a very important engagement on hand, and postponed the interview until the next morning. From that time until the middle of October I never saw or heard a word of Mr. Shipherd.

By the CHAIRMAN:

Q. Who was present that evening at that interview?—A. Senator Blair. Mr. Shipherd was introduced to me by Senator Blair, and I never saw him except in company with Senator Blair at any time. I never was one moment with him, at any time, except a single moment which I will explain further on. But from the 25th of July until the 13th of October I neither heard from Mr. Shipherd nor saw him, until I saw him for a very brief time on the 3d of November. I think he has stated the dates correctly, so far as I have observed, in his testimony, but he has erred a good deal as to the length of the interviews.

Now, what was said by Mr. Shipherd in the course of these interviews, as fixing the foreign policy of the government, the committee will pardon me for saying, never appeared to me as very extraordinarily pertinent testimony on that subject; and, as Mr. Shipherd has endeavored to explain what the policy of this government was touching Peru, it has occurred to me it might be refreshing to the committee to turn to the actual written correspondence between the State Department and the minister in Peru on that subject. If you are going to fix the policy that the State Department had with reference to a particular foreign question, it seems to me the first natural inquiry would be what was said in the dispatches to the minister; and what did the minister say in his dispatches to the department.

The CHAIRMAN. I would like to ask you this—

The WITNESS. Let me make my general statement first, and after that I will answer as many questions as the committee choose to put to me. What Mr. Shipherd's opinion was of what I ought to have written, or what it would have been wise to have written, or what it would have been for his interest to have had me write, does not seem to me to be a very important matter of inquiry. What actually was written I have the pleasure of presenting to the committee. In the Peruvian and Chilean pa-

pers that were sent in, they selected only those that seemed pertinent to the inquiry—the large volume that was published. These two envelopes (exhibiting them) contain everything that passed between Minister Hurlbut and myself; my own dispatches, which I think are twenty-six or seven in number, are all given in full. There are a few of General Hurlbut's that are given by a syllabus, but very fully, as the State Department makes a full abstract, so that the entire correspondence is there, and I desire to leave it with the committee.

By Mr. BLOUNT:

Q. Is that additional to what has already been submitted in this other correspondence?—A. It is everything that is there, and it contains a great many trifling inconsiderable dispatches. It does not add anything to the question; but, as I have seen it several times suggested that we should never get to the bottom of this thing until we had all the dispatches, I have the pleasure of presenting them all to the committee; everything which passed between General Hurlbut and myself during the time of his acting as minister at Lima; everything is included here in these two envelopes.

By Mr. KASSON:

Q. I would like to ask whether these communications which you now submit, are submitted to the committee with the consent of the Executive of the government?—A. They contain all that has been submitted heretofore. I sent to the State Department, wrote a note, asking for copies of the other papers, and they sent them all to me.

Q. So that there is no chance of their being considered irregular disclosures?—A. O, no, sir; there is nothing to disclose.

Q. I mean there is no irregularity in the submission of them to the committee?—A. O, no, not the slightest. I have not been to the department myself, but I addressed a note to the department and got these in reply.

Q. You assume, then, to give them to the committee and to the public with the consent of the department?—A. Yes, sir; and if there be any great danger in giving out the information which some of these dispatches contain, that General Hurlbut might have his stationery in such a way, or might go on the Alaska from Panama down, or might do this or that—several trifling little things—that is all contained in here; in fact every thing of the slightest importance that was done. I only do this through excess of caution and in order to develop everything that has transpired, because certain parts were left out as they published them. You, yourself, have served in the foreign office, and know very well that out of every five dispatches three or four of them would be inconsiderable and of no public interest whatever.

Mr. KASSON. I only wish to guard the committee from seeming to get them irregularly.

The WITNESS. Very well. In these dispatches is to be found everything that transpired between Mr. Hurlbut and myself in regard to the Cochet claim, and any quotations that I shall make are not from any extra dispatches that I put here, but from dispatches already published by the State Department, because there is nothing to quote from except them, and (I must repeat here), it seems to me the evident way to get at the exact thing that was done was to find out from the dispatches of the minister and the Secretary just what occurred.

Mr. Shipherd came to me under the introduction of Senator Blair and had a private interview on Monday evening, which was adjourned until the next morning. I beg now to call the attention of every member of the committee to this point, because I am entering on my statement of the facts that occurred at that time.

Mr. Shipherd came and stated to me that he was the representative of a very important claim against Peru, known as the Cochet claim, of which, up to that time, I had never heard. I did not know the name, and asked him how it was spelled. I supposed it was a French word from its sound, but I did not know the spelling of it, even, and had never heard the word in my life before. He went on to state that it was a very important matter. He stated, generally, that it belonged to the Peruvian Company; that he was its general agent; that Senator Blair was one of the active counsel; that ex-Senator Boutwell (whose opinion he had in his pocket and offered to show me) was one of the active counsel; that ex-Senator Eaton, of Connecticut, and ex-Senator Conkling, of New York, were also his counsel; that Mr. Scott Lord was one of his counsel, and I think he stated (I am not sure that he mentioned that) the name of Judge Robertson; I think he added Judge Robertson, but I am sure he added the name of ex-Senator Cragin, of New Hampshire.

By Mr. BLOUNT:

Q. Was that the first interview?—A. I think the very first. I thought it was a very formidable array of counsel, I remember. He said the men who stood behind the claim as its owners were very strong financial men in New York, and he specified among them E. D. Morgan & Co.; he also specified Seligman & Co., and he also specified August Belmont & Co. I think he mentioned a dozen names that are picked out of those that are afterwards developed in his letter, but I do not recollect all of them.

But he made a very great display of strength, both in the counsel of the company and in the alleged ownership. I mention this *en passant*, by way of saying that I have been somewhat criticised for not kicking Shipherd out of the house the very first morning I met him. But I beg to say to the committee that a gentleman who comes introduced by a United States Senator, and who has three ex-United States Senators for his counsel, besides an ex-Secretary of the Treasury, and who has August Belmont & Co., E. D. Morgan & Co., and Seligman & Co., for partners, is not a man that you would naturally kick out at the very first sight of him. So that I beg to be excused for not performing the duty which three or four months afterwards I practically did on further information.

He went on and told me of this claim and spoke of its vastness, its value, its strength, and its integrity. I said to him, "Mr. Shipherd, after all that you disclose of the claim, of which I know nothing, and am bound, of course, to take your representations, you make out no case for the intervention of this government." We argued this matter for some time. I said, "Your case comes to a *reductio ad absurdum*. If you think that you can take up a claim of a Peruvian citizen and get the intervention of the United States Government by selling a portion of it to an American citizen, then you can go over to England and sell a portion to English subjects; you can go to Germany and sell a portion to German subjects; you can go to France and sell a portion to French citizens, and thus you could get England, Germany, France, and the United States all to intervene, and you can unite the civilized world against Peru, and probably compel her to do something." He said, "You do not understand this." I told him I did not. He said, "The case here is not a claim at all; it is property." Said he, "What would you say if an American citizen owned a block of stores in Lima, or a great plantation or *hacienda*, that he had been cultivating—owned it in fee—and the attempt were made to dispossess him of it; would not that make a case of intervention?" I said, "That would alter the case." If I recollect his testimony, he broaches a little on this very idea, but he does not give it in full. "Well," he says, "that is the case which I present to you. I have here the opinion of Mr. Evarts," and he read to me the opinions of Mr. Evarts, or rather one of them he read, and the other he quoted, in which he says, "if Cochet was the discoverer of guano, his discovery vested in him the title to one-third of all the guano in Peru, and he may at his option claim one-third of each heap or any other equitable one-third of the total."

Then he says: "If Chili attempts to resist Cochet's demand for his own, she does but make herself immediately and directly liable for the whole debt as for a tortious detention." He quoted, as still stronger, the very opinion which was afterwards brought to light in the letter of Mr. Camacho, which, instead of being translated from Spanish into English, I venture to make the affirmation was wholly Mr. Shipherd's original composition and was translated into Spanish by Mr. Camacho; that is the difference. I said, "If this be your case that you have a natural ownership of property there, Mr. Shipherd, it would, of course, then present a different case, but I do not credit it. It seems to me," I said, "to be a claim." "Well," he said, "you ask for a report upon it; do that for me." I said, "A claim which has such reputable counsel as yours, and so strong an array of ownership as you have, I certainly would inquire into from our minister; I have no objection to that whatever; that involves nothing and commits the government to nothing. That was on the 26th of July. A day or two afterwards I called Mr. Trescot's attention to the matter. Mr. Trescot was then assisting in some matters in the department, especially with reference to South American affairs.

We had before that been talking of the Landreau claim, separately from this. That was a claim with which I was familiar, it having been before Congress. We had thought of writing a letter about the Landreau claim, and I said to him, "You had better include an inquiry to General Hurlbut in regard to this matter and ask him to report upon the status of the claim called the Cochet claim. I found that Mr. Trescot, who knew everything in connection with diplomacy in this country, knew of the Cochet claim, and under my direction a despatch was written, and I have on this sheet here every word that ever passed between the State Department and Mr. Hurlbut about the Cochet claim. After an introduction, saying that letters had been submitted to the department, the despatch says:

"In reference to the Cochet claim there has been no information laid before the department of a sufficiently definite character to warrant a specific instruction, and in the absence of the requisite data here you will be left to take such steps as may seem expedient in investigating the origin and character of the claim.

"The primal point at issue is whether any American citizen or association of citizens has acquired an interest in the claim in a manner entitling him or them to the good offices of this government in making any representation to Peru. As the American holders of the claim or their attorneys will be on the ground"—and I will say right here that he said two of these gentlemen at least would immediately proceed to Peru—"you will no doubt be placed in possession of all the facts, but you will take no

step committing your government to the use of its good offices without first reporting in full to the department for well-considered and definite instruction."

That was on the 4th of August. On the 14th of September, General Hurlbut replied as follows:

"SIR: I acknowledge the receipt of your dispatch No. 7, dated August 4, 1881, in relation to certain alleged claims upon the Government of Peru. As to the Cochet claim, this legation has nothing but vague and sweeping statements, better adapted to creating a commercial enterprise than to any judicial or quasi-judicial action. I have been favored with two very extraordinary letters and some printed matter, emanating from Mr. J. R. Shipherd, to which I reply by this mail, asking specific statements as to the origin, character, and extent of the claim and the proofs in support of it."

That was every word that General Hurlbut said in reply.

In answer to that letter, which was received at the department somewhere about the 17th or 18th of October probably (it is not marked), I answered him, the 17th of November, as follows:

"SIR: Your No. 12, in reference to the Cochet and Landrean claims, indicates a prudent and discreet course on your part. After the instruction in my No. 7 in regard to this subject had been mailed, I became convinced that there was no need of even the preliminary inquiry which I suggested in regard to the Cochet claim. There is no just ground whatever on which this government could intervene on behalf of it. In so far as there may be any basis for the claim at all, it originates in the demand of a native Peruvian against his government. If American citizens purchased an interest in such claim they purchased nothing more than the original claimant possessed. They did not and could not purchase the good offices of this government, and you are instructed not to extend them in the case of the Cochet claim."

In explanation of that, I will state that after the original instructions had been sent, Mr. Trescot looked over some French documents to see whether there was the slightest ground for considering it to be actual property instead of a mere claim—property in possession—and he found that there was no ground for that. I say Mr. Trescot looked over these documents and reported that there was no foundation whatever for the allegation that Mr. Shipherd made, on which the alleged opinion of Mr. Evarts was based. I had a conversation with Mr. Elmore, the Peruvian minister, which entirely satisfied me, and hence I wrote this letter. After that I received from General Hurlbut a dispatch of date the 2d of November, which crossed this dispatch of mine; they were *en route* at the same time. In that dispatch Mr. Hurlbut says:

"I wrote to the department, in my No. 12, my opinions upon the Cochet claim, on which Mr. Shipherd and his associates rely. I have also written in reply to Mr. Shipherd's letters giving him my views of his case so far as I know its merits. I have pointed out to him the utter defect of proof as to three positions, each vital.

"The whole colossal speculation rests upon assumptions, not evidence. Thus, first, it is not true in fact that Cochet discovered either guano or its uses as a fertilizer. As such it has been known and used for hundreds of years, far back into the time of the Incas.

"Second. It is not true that Peru ever recognized him in any such capacity.

"Third. It is not true in fact that his rights, whatever they were, descended to his illegitimate son, under whom these parties claim, or at any event that any record of legitimation has thus far been produced.

"I presented these defects to Mr. Shipherd, who does not like my criticism, and writes to Mr. ——— that he can get on quite well without me, as he has the whole government and all their friends on his side and pledged to his scheme.

"I am very glad to be relieved, for he has overwhelmed me with voluminous matter, so strangely written, and with such singular assumptions, that I am inclined to doubt his sanity or his truthfulness."

That letter was received about the 1st of December, or in the last days of November. On the 5th of December I wrote General Hurlbut as follows:

"SIR: Your No. 25 of the 2d ultimo, in relation to the Cochet claim, has been lately received. I have pleasure in expressing my appreciation of your course, as detailed therein, with regard to Mr. Shipherd's advocacy of that claim, and especially your action in sending hither the correspondence in the case."

"The inclosed copy of a letter which I have addressed to Mr. Shipherd shows that I entertain a no less decided opinion than you have held as to the indecency and dishonor of his attempts to influence diplomatic consideration of this claim. Perhaps I should mitigate somewhat the severity of my language in view of the possible fact, pertinently suggested by you, that Mr. Shipherd is not wholly in his right mind."

That was the entire correspondence touching the Cochet claim.

Mr. BELMONT. Was there not a dispatch of November 19 touching the Cochet claim?

Mr. BLAINE. No, sir; I will come to that in a moment; not a word about the Cochet claim and our intervention; not a syllable.

Mr. BELMONT. I do not wish to interrupt your statement—

Mr. BLAINE. I will take up that question in a moment. As to the Cochet claim and intervention of the United States in its behalf, that closed the correspondence; I have read everything there was written.

Now, as to Mr. Belmont's question. I presume he alludes to what I have right here before me. After I had written this in regard to the Cochet claim (and I am very glad that he made the suggestion, for it will come in here as well as anywhere), on the 17th of November, I had not received Mr. Hurlbut's letter of November 2, which gives the history of the utter worthlessness and baselessness of the Cochet claim. I had only received from him the letter in which he said that he had only a confused mass of facts in regard to it, and had written to Mr. Shipherd for an entire statement of it. On the 17th of November, however, I had written this and instructed him not to use his good offices in behalf of the Cochet claim. The Peruvian Company still survived with all its ownership uncontradicted, and with all its counsel in full blast as the owner of the Cochet claim, which was a Peruvian claim. Mr. Shipherd had seen me and had stated that ex-Senator Eaton and ex-Senator Conkling were about to proceed to Peru. He told me that on the 3d of November, and I believe he has testified here of two ex-Senators whom he was about to send; they were ex-Senator Conkling and ex-Senator Eaton. They were going out there, and I instructed General Hurlbut that he must not intervene in behalf of the Cochet claim. After that I wrote him a letter, in which I instructed him not to touch the *Crédit Industriel*. And I added:

"I have another word of caution to give you. I presume that you will be asked by the agents or officers of the Peruvian Company of New York to lend your influence as United States minister to promote its interests. It would, of course, present to you the claim of an American organization composed of reputable citizens and entitled to your good offices where they may with propriety be extended. But you will specially avoid any advocacy of the claims of that or any other company or individual in the pursuit of personal ends or business enterprises. To a minister of your experience I need not point out the proper distinction between diplomatic good offices and personal advocacy. To extend all proper protection to American citizens, and to secure for them in any interests they may have a *respectful hearing* before the tribunals of the country to which you are accredited, and generally to aid them with information and advice, are among the imperative and grateful duties of a minister—duties which increase his usefulness and add to his respect, and duties which I have no doubt you will faithfully perform. To go beyond and assume the tone of advocacy, with its inevitable inference of personal interest and its possible suspicion of improper interest, will at once impair, if it does not utterly destroy, the acceptability and efficiency of a diplomatic representative."

I need not read the remainder of it. That was written in view of the fact that two attorneys were to appear there in person, eminent ex-Senators, who, Mr. Shipherd assured me, would immediately start for Peru to represent this claim; and while the United States could make no intervention whatever in regard to the Cochet claim they at the same time, through the State Department, instructed their minister that if gentlemen representing the claim came to Lima they were entitled to their good offices to secure for them a respectful hearing before the tribunals of Peru. That would be given in an instant to any person whose rank and good character were known by the State Department. If any gentleman came to the Department of State and said, "I have an important matter of great interest to me in Denmark (or in Sweden, in Chili, in Peru, or anywhere else), and I beg you will give me a letter to the minister so that I may have the kindly offices of the government in being introduced and commended properly," why it was always given. And I took care after I read the letter of November 17 to send to him by the very same mail that went out in the same bag this further injunction that they were entitled—that is, those who asked for a hearing were entitled—to respectful treatment. That is what I suppose Mr. Belmont to refer to. Now, that is the whole of the Cochet claim in its correspondence with the State Department, and out of that little bit the fire has been kindled.

Now, Mr. Chairman, one word before you close, if you have to go.

The CHAIRMAN. I will say that the matter I referred to at the beginning of this session, as likely to interrupt the proceedings of the committee, has gone over until tomorrow, and Mr. Blaine can continue his statement for the present.

Mr. BLAINE. In looking over a great deal of Mr. Shipherd's testimony, which the chairman kindly directed should be sent to me, and which I have read from day to day, and taken notes of, there was only one thing which I especially and particularly desired to correct; indeed, there was only one thing which seemed to me to be of a character which at my hands required special notice, and that was, that after I wrote him the letter which I did, striking his name from the list of attorneys at the State Department, and stating to him that I had submitted the matter to the President and but for certain considerations would send his name to the grand jury, he comes before

the committee and swears (in several places, I think) that he told me at the very first interview of his offering a bribe to Hurlbut, and that I was aware of it from the very first.

Mr. Chairman, if there was not any evidence on the subject, that is a very remarkable statement; that a man should come to the American Secretary of State introduced by a Senator of the United States, and deliberately tell him that he had offered a bribe of \$250,000 of stock to a minister plenipotentiary in a foreign country. That ought not to require a great deal of evidence in rebuttal. But he goes further than that; he swears that he told all his counsel the same thing. He says in his testimony, Mr. Rice being the examiner:

"Did Senator Blair see that letter before you wrote it?"

"The WITNESS. Oh, no, sir! he was not retained until after that.

"Mr. RICE. Did you tell him of it prior to the interview of July with the Secretary?"

"The WITNESS. Oh, yes, sir! I think so; I think there was no mistake about that. I brought it to his attention at an early date, I think. I brought it to the attention of every gentleman whom I retained as counsel. It was a letter which I expected sometime would be discussed, and I took pains to get their opinions upon it."

Seeing that, on the 8th of April I wrote this note:

"WASHINGTON, April 8, 1882.

"Hon. HENRY W. BLAIR,
United States Senator:

"DEAR SIR: Mr. Shipherd, who is now testifying before the Committee on Foreign Affairs of the House of Representatives, has stated that in an interview with me as Secretary of State, at which you were present, he acquainted me with the fact that he had offered to General Hurlbut \$250,000 of the stock of the Peruvian Company. I will be obliged if you will give me your recollection of the matter.

"Very respectfully,

"JAMES G. BLAINE."

To which Mr. Blair replied as follows:

"WASHINGTON, April 10, 1882.

"Hon. JAMES G. BLAINE:

"DEAR SIR: In answer to your favor dated the 8th instant, I have to say that I never heard Mr. Shipherd state to you that he had offered to General Hurlbut \$250,000 of the stock of the Peruvian Company, or any other amount of stock.

"I never heard of that offer being made until about the 4th or 5th of December last, when you showed me the letter of Mr. Shipherd of June 2d, returned to the department by General Hurlbut.

"Very respectfully, yours,

"HENRY W. BLAIR."

There is a very large lie out somewhere, and I do not think it will take a great deal of experience to locate it.

I then wrote to several of the counsel a letter of which this is a copy, although it might have been varied a trifle in some cases, but no more so than would happen in an ordinary writing:

"MY DEAR SIR: Will you permit me to inquire whether Mr. Jacob R. Shipherd at any time informed you of the fact that he had written a letter to Hon. Stephen A. Hurlbut, after he was appointed minister to Peru, offering him \$250,000 of the stock of the Peruvian Company?"

"I do not mean to imply that there is any ground whatever for presuming such fact; but for certain reasons I desire to have a statement from you personally.

"With great respect,

"JAMES G. BLAINE."

I addressed that to Senator Boutwell. Mr. Boutwell says in his reply:

"WASHINGTON, April 15, 1882.

"MY DEAR SIR: In reply to your note of this date, I have to say that I had no knowledge of the proposition from Mr. Shipherd to Mr. Hurlbut, referred to by you, prior to the receipt of Mr. Shipherd's letter to me, dated December 8, 1881, and already printed.

"Very respectfully,

"GEO. S. BOUTWELL.

"To the Hon. JAMES G. BLAINE, &c., &c., &c."

There is another case of perjury from somebody.

I addressed a similar note to Hon. Mr. Robertson, and received the following reply from him:

"CUSTOM-HOUSE, NEW YORK,
"COLLECTOR'S OFFICE,
"April 17, 1882.

"DEAR SIR: I have your favor of the 15th instant.

"Mr. Jacob R. Shipherd never told me that he had written a letter to Stephen A. Hurlbut after he was appointed minister to Peru, offering him \$250,000 of the stock of the Peruvian Company.

"Yours, very truly,

"W. H. ROBERTSON.

"Hon. JAS. G. BLAINE."

I addressed a similar note to ex-Senator Cragin, and received from him the following:

"NEW YORK, April 18, 1882.

"DEAR SIR: Yours of the 15th instant received. Mr. Jacob R. Shipherd never told me that he offered General Hurlbut \$250,000, or any other amount of the stock of the Peruvian Company, either after or before he was appointed minister to Peru, and I never had an intimation of the kind till Shipherd's letter appeared in print.

"Yours truly,

"A. H. CRAGIN.

"Hon. JAMES G. BLAINE."

These are the gentlemen he swore were his counsel, and swore that he told the story to. I addressed a similar letter to Mr. Scott Lord, and received from him the following in reply:

"No. 261 BROADWAY, NEW YORK,
"April 17, A. D. 1882.

"DEAR SIR: I was not retained by the Peruvian Company until after the 1st of September, A. D. 1881, and know nothing of the letter sent by Mr. Jacob R. Shipherd to General Hurlbut in the preceding June, relating to the two hundred and fifty thousand dollars in the stock of the Peruvian Company. I never heard of the letter until it was disclosed in the New York papers.

"Very respectfully yours,

"SCOTT LORD.

"Hon. JAMES G. BLAINE,
"Washington, D. C."

On the 16th of April, 1882, I addressed the following letter to Mr. Evarts. This is outside of what the witness swore to, but relates to a matter which he has frequently asserted:

"WASHINGTON, D. C., April 16, 1882.

"Hon. W. M. EVARTS:

"DEAR SIR: Mr. Shipherd, of the Peruvian Company, now testifying before the House Committee on Foreign Affairs, quotes you, in a letter to General Hurlbut, written in August last, as giving the following legal opinion:

"If Cochet was the discoverer of guano, his discovery vested in him the title to one-third of all the guano in Peru, and he may at his option claim one-third of each heap, or any other equitable one-third of the total.'

"Again Mr. Shipherd quotes you as giving the following opinion:

"If Chili attempts to resist Cochet's demand for his own, she does but make herself immediately and directly liable for the whole debt as for a tortious detention.'

"Mr. Shipherd authorized another person to quote the following opinions as given by you:

"Cochet became immediately the owner in fee absolute of one-third of all the guano in Peru, known and unknown, for being the discoverer of its value. His right was inseparable from the thing itself wherever found, and that ownership could never be extinguished or limited save by his own act.'

"You will greatly oblige me if you will state whether Mr. Shipherd had any authority for attributing these opinions to you. It will be a special favor if you will answer by return mail.

"Very respectfully,

"JAMES G. BLAINE."

In answer to that letter I received the following from Mr. Evarts:

"52 WALL STREET, NEW YORK,
"April 18, 1882.

"DEAR SIR: Your favor of 15th inst. (post-marked 17th) has this moment reached me.

"You give two passages from a letter said to have been written by Mr. Shipherd, now under examination as a witness before the House Committee on Foreign Affairs, in August last, to Minister Hurlbut, purporting to be quotations from a legal opinion of mine. You also give a third passage which you say Mr. Shipherd authorized another person to quote as an opinion given by me.

"In reference to these several quoted passages you desire me to 'state whether Mr. Shipherd had any authority for attributing these opinions to you (me.)'

"These quoted passages all relate to the so-called Cochet claim, and Mr. Shipherd had no authority from me to attribute to me these opinions or either of them or any part of them or either of them. I have never given an opinion to any person concerning the Cochet claim or any person or anything connected therewith, nor have I ever given an opinion to Mr. Shipherd or any person connected with him on any subject.

"I have never known Mr. Shipherd personally, and have no recollection or impression of having ever heard of him or the Cochet claim except through the public prints, and there only during the last few months.

"I sailed for Europe for the purpose of attending the International Monetary Conference in Paris as one of the delegates of our government on the 5th of April, last year, and landed on my return from that errand on the 5th of September last. Since my return I have learned that during my absence Mr. Shipherd laid certain printed papers relating to the so-called Peruvian Company before the law firm of Evarts, Southmayd & Choate, desiring them to act as counsel for that company. This they declined to do, and no person in any way connected with me has otherwise had to do with Mr. Shipherd, the Peruvian Company, or the Cochet claim, as far as I know or have ever heard.

"I am, my dear sir, yours very truly,

"WM. M. EVARTS.

"The Honorable JAS. G. BLAINE."

Mr. Shipherd stated these facts, without any qualification, in his letter several times. I was impelled, in the pursuit of Mr. Shipherd's character as a truth-teller, to make sundry and divers inquiries in that regard, and there was another letter that I discovered which, as I am not quite in full voice, I would be glad if one of the secretaries, or any member of the committee, would read.

The clerk read the letter referred to, as follows:

"Mr. Shipherd to Mr. Hurlbut.

"SEPTEMBER 19, 1881.

"MY DEAR SIR: On the 17th, Mr. Elmore, the Peruvian minister resident at Washington, called upon me, introduced by a diplomatic colleague, who is my friend, and we had a long and very satisfactory conference.

"He informed me that he had some weeks since forwarded to President Calderon the paper I sent him, the same sent Dr. Arizola, and asked for duplicates. He explained to me the plans of the Société Industriel (in which he is deeply interested), and responded cordially to my suggestion that if our plans should succeed we would make a liberal co-operative arrangement with the société as a party legitimately entitled to fair recognition. He discussed our scheme with courteous deference, as if it were in principle settled, and only methods of giving it effect remained to be considered. He asked somewhat eagerly whether Peru might rely upon American protection in carrying out the agreement with us after she had made it, and seemed to have no anxiety on any other point; indeed, he said, 'If that is assured all the rest will follow as smoothly as the flowing of a stream.'

Mr. BLAINE (interrupting). You need not read any further; that is sufficient. Seeing that letter the other day, I addressed this note to Mr. Elmore:

"WASHINGTON, D. C., April 20, 1882.

"Hon. J. F. ELMORE,
Peruvian Minister, &c.:

"DEAR SIR: I beg to call your attention to a letter of Mr. Jacob R. Shipherd to General Stephen A. Hurlbut of September 19, 1881, published in Executive Document No. 68. Will you be good enough to state whether Mr. Shipherd truthfully relates therein the incidents of his alleged interview with you?

"Very respectfully,

"JAMES G. BLAINE."

Mr. Elmore states, in reply to that, as follows:

"LEGACION DEL PERU
"EN LOS ESTADOS UNIDOS DE AMÉRICA,
"Washington, 20th April, 1882.

[*"Personal."*]

"Hon. JAMES G. BLAINE,
"Washington, D. C.:

"DEAR SIR: I am in receipt of your letter of to-day calling my attention to a letter of Mr. Jacob R. Shipherd to General Stephen A. Hurlbut of September 19, 1881, published on page 24 of House of Representatives Executive Document 68, part 2, of present Congress, and requesting me to state whether Mr. Shipherd truthfully relates therein the incidents of his interview with me.

"In reply I beg to say that I have carefully read Mr. Shipherd's letter, which surprised and amused me extremely, and that, with the exception of the two facts, first, that I did see him once (being introduced, at his repeated request, by my colleague, Señor Simon Comacho), and that I furnished him, on his request, with a copy of the printed public contracts of the Société Générale de Crédit Industriel et Commercial with Peru (which I did in order to show him, Shipherd, that Peru, and consequently President Calderon, were committed to a legal, public, honorable, financial plan), every statement made by him with respect to me is entirely false.

"Very respectfully, yours,

"J. F. ELMORE.

"P. S.—I hope you gave no credence to the silly story that I had any knowledge of your making a marginal note of 'Go it, Steve,' or of any other words, on one of your dispatches.

"J. F. E."

I believe that got traced from Mr. Shipherd, via Mr. Shipherd, down to Mr. Elmore, and has really awakened some attention on the part of the American press.

Now, Mr. Chairman, these are direct and explicit disproofs of matters which Mr. Shipherd has sworn to here. If there is any strength in the statutes, and if the same inspiration of mercy is not present to shield him now which shielded him in December last, he ought to be sent to the grand jury. It is flat, absolute, unqualified perjury.

I want to call your attention to another matter.

The CHAIRMAN. If Mr. Blaine will allow me, before leaving the subject-matter of that interview, I have to suggest that you supplement it by your own statement as to this letter of June 2d.

Mr. BLAINE. Oh! Oh! It was an absolute, "whole-cloth," irredeemable, detestable lie.

The CHAIRMAN. I think that covers the ground. [Laughter.]

Mr. BLAINE. If it does not I will add a few more. It did seem to me that the man was really out of his mind. I do not think that Mr. Shipherd is a man of sound mind. I do not, Mr. Chairman, regard him as a man of sound mind; if I did, I should regard him as an extremely wicked man. I do not think a sane man would come with a United States Senator as his counsel and next friend to introduce him, and quote the illustrious gentlemen he did as his counsel, and refer to these eminent bankers and business men as his associates, as he did, and then at the very first introduction to the Secretary of State tell him that he had smoothed the way for an interposition by the government by offering a bribe to the minister who would carry it out. I think that story ought scarcely to require a denial.

There is a matter I desire to detain the committee upon a moment, and I do it from a sense of justice to the President who is dead. General Hurlbut came to this city on the 19th day of May last. I have looked at the data which certify that. I think he was nominated that day, and the next day he was confirmed and left the city. He returned on the 24th of May and left on the 28th, the 28th being Saturday. He was in New York on Sunday and Monday, and the interview that Mr. Shipherd details at great length took place on the 30th of May, in which General Hurlbut rehearses to him in great detail (even giving a good deal of detail here, where there is but an abstract of it) what the President commissioned him to tell him. To begin with, he says he addressed, on the 26th of May, this letter to General Hurlbut:

"MAY 26, 1881.

"Hon. S. A. HURLBUT,
"Washington, D. C.:

"DEAR SIR: Pursuant to correspondence initiated several weeks since, I sent to the President on the 21st instant a full set of papers showing a claim owned by my clients which should control the future of Peru for at least the next twenty-five years.

"With these papers was an explanatory letter.

"Yesterday I sent to the Secretary of State a duplicate set for your own use.

"The purpose of this note is to say that I would like, if consistent with your engagements, an early personal interview—quite informal—at which I might explain to you freely and fully the policy my clients propose to pursue, and the nature and extent of the co-operation in detail which I shall ask the President to afford us.

"More particularly is it our purpose and desire, and it will be our endeavor, to conduct our negotiations in a spirit so liberal and with a temper so reasonable as to avoid the necessity of diplomatic intervention.

"I inclose you a single proof, which will suggest our programme, and by it you will identify the parcel sent under cover to the Secretary of State for you.

"I can come to Washington if necessary, and shall come whenever the President sends for me; but if I could see you *here*, and *at once*, it would oblige me, as I am exceedingly busy.

"Favor me with reply by wire, and oblige,

"Yours truly,

"JACOB R. SHIPHERD."

To this Mr. Shipherd says that he received in reply, dated Washington, D. C., May 28, 1881, the following, by telegraph:

"WASHINGTON, D. C., May 28, 1881.

"JACOB R. SHIPHERD:

"No. 10 Spruce street, New York:

"I will be at the Fifth Avenue Hotel Sunday and Monday. State when and where an interview can be had.

"S. A. HURLBUT."

After skipping over some of the intervening matter that is not essential (for I desire to make my statement as brief as possible), I find that he says that he went to the Fifth Avenue Hotel where, he says, on recognizing him (that is General Hurlbut) "almost instantly he called my name, recollecting me also. The recognition proved to be mutual. He invited me to some convenient sofa, and, on being seated, he opened the conversation with this remark: 'But, Mr. Shipherd, your figures are enormous.' That was the first word in the conversation on this business. Of course, there were some mutual social courtesies interchanged. I replied, 'General, I am not responsible for the figures, nor any of the facts. I take them as I find them.' I cannot undertake at this distance of time (proceeding from that point) to give anything like a verbatim account of what passed. I can only give the substance, and I think I can give that with sufficient accuracy.

"He stated to me that he had been sent to tell me that the President regarded my case (as made out in the printed papers) as being as strong a case, both in law and equity, as a case could well be made; that the first difficulty in the way was the unfortunate condition of Peru; that it would seem more than unkind to press Peru at such a time as this for a claim so large as that, no matter how just; that the prime condition on which the President could consent to undertake it in the behalf of my clients was that the scheme should be so framed as to be remedial, and that Peru should have help under it"—the idea being that to collect a thousand million dollars out of Peru would be to help her, I suppose. "He went on to say"—that is the President went on to say—"that this claim should be put in such a form that the owners of the title should ultimately realize what was just, or such reasonable proportion of it as might be realized without imposing hardships upon the Peruvians, and that meanwhile it could be made a means of enabling Peru to pay her war indemnity to Chili, and thus get out from under the heel of Chili, which was likely to crush the last life out of her; that in such a case, and on the further condition that this claim should be turned over to a company, the management of which should be in the hands of gentlemen personally known to the government, and entitled, on their records, to the confidence of the government (meaning our government), then on those two conditions the hearty support of the United States Government could be relied on.

"He further declared that this claim must not be pressed in any Shylock spirit, enormous as it was; that there was to be no expectation that it should be necessarily realized, and that we must be content to accept what was reasonable and possible in the premises, and not push it so far that it would tend to the permanent crippling of the Peruvian people." All that is from the President of the United States.

Now, Mr. Chairman, one or two of the principal actors are in their graves, and it is very difficult to establish a negative. But I believe from inferential proof right here, not only did the President never say one word of that, but the letter to General Hurlbut, which he says, he wrote, never was sent nor was the dispatch from General Hurlbut ever received. The whole of it is a perjury from beginning to end. And I will give you my reasons. In this letter, General Hurlbut being in Washington at the time, he says:

"Yesterday I sent to the Secretary of State a duplicate set for your own use.

"The purpose of this note is to say that I would like, if consistent with your engagements, an early personal interview—quite informal—at which I might explain to you

freely and fully the policy my clients propose to pursue, and the nature and extent of the co-operation in detail which I shall ask the President to afford us.

"More particularly it is our purpose and desire, and it will be our endeavor, to conduct our negotiations in a spirit so liberal and with a temper so reasonable as to avoid the necessity of diplomatic intervention.

"I inclose you a single proof, which will suggest our program, and by it you will identify the parcel sent under cover to the Secretary of State for you."

Now, it is hardly conceivable that with that letter General Hurlbut would not call at the State Department for this matter. I know the subject never passed the lips of General Hurlbut to me, nor did I ever speak to him of it, for I had never heard of the subject. There were only two places where he could apply. Any newly appointed minister unfamiliar with the State Department would come directly to the Secretary. A person who had been in the diplomatic service, as General Hurlbut had been in former years, might go to the chief clerk. As Mr. Kasson well knows, the chief clerk is a sort of mouth-piece for everything, and ministers who are familiar with the department often go to the chief clerk for a document they want to see without bothering the Secretary. I therefore went to the chief clerk of the department on Saturday—a man of unusual accuracy and retentiveness of memory—and I asked him if he had any recollection whatever of General Hurlbut's applying to him or to the department for that; and Mr. Brown gives his reply in this letter:

"WASHINGTON, April 22, 1882.

"HON. JAMES G. BLAINE:

"DEAR SIR: In answer to your verbal inquiry of to-day, I beg to state that, when General Hurlbut was in this city waiting for his commission and instructions as minister to Peru, I have no recollection of his ever asking for any documents alleged to have been left for him at the Department by Mr. Shipherd. All such documents would necessarily pass through the office of the chief clerk.

"Very respectfully, yours,

"SEVELLON A. BROWN."

General Hurlbut was undoubtedly in New York on the 30th of May, for in the New York Tribune, among the arrivals, the few that are culled out of public men that are given every day, General Hurlbut's name is conspicuous as being at the Fifth Avenue Hotel. That was ground enough for Mr. Shipherd. He evidently went there, and he says they sat down, meeting in the corridor, on a convenient sofa. Now that would be an extraordinary way to conduct an interview, that had been prefaced by a formal letter to Washington—a formal dispatch. He met him by chance there, and they went and sat down on a sofa, and there on that sofa the modest scheme is narrated at great length, for if this is the syllabus, it would take two or three hours for him to relate it. This conversation was followed up by Shipherd with a sixteen-page letter, in which he does not pretend to relate the offers made from the President. Mr. Shipherd then received from General Hurlbut this reply, June 6, from Belvidere, Ill.:

"BELVIDERE, ILL., June 6, 1881.

"JACOB R. SHIPHERD, Esq.,
"New York:

"SIR: I am in receipt of your favor of June 3d. I think I understand the case of your clients."—[He ought to, for he had sixteen pages of Shipherd's stuff in this letter.]

"You must, however, be aware that the decision of an affair so grave, and involving such enormous possibilities, does not belong to me.

"Whatsoever may be the solution of the matter, it must come from the President. It is my duty to carry out such instructions as I may receive.

"Your obedient servant,

"S. A. HURLBUT."

On the previous Monday, General Hurlbut had related to him, he says, at great length, the full details of what the President had sent him to New York to tell him, and yet there is not one solitary reference to it in this private note from Belvidere—not a solitary reference except that which a prudent minister should properly write in saying that this was a matter he had nothing to do with; that he was simply to obey instructions. Then he wrote another letter from Belvidere, as follows:

"BELVIDERE, ILL., June 16, 1881.

"J. R. SHIPHERD, Esq.:

"DEAR SIR: Yours of 13th received. You must be aware of the fact that I can take no cognizance of your case, unless it be referred to me from the Department of State.

"Whatsoever action, therefore, you may propose to have taken by the United States must be decided upon at Washington.

"Your obedient servant,

"S. A. HURLBUT."

But Mr. Shipherd swore here that it *had been* decided, and that he had been sent by the President of the United States to give him this long narrative of what had been done.

Mr. Chairman, I of course cannot, as I said before, establish the truth of a negative, but I am willing to take the most solemn oath that conscience can be laden with that in my belief the President of the United States died without ever having heard of the Peruvian Company or the Cochet claim, or Mr. Shipherd's name in connection with it at all; never! I saw the President of the United States every day from his inauguration until he was shot, with the exception of the days that he spent with his sick wife. Our intimacy was not a common one; I do not speak of it boastfully; it is necessary to speak of it here to vindicate his name, and to prevent it from being mixed up with this dirty job. I was with him every day. I was something more than a member of his Cabinet, and, in my connection with him as a member of his Cabinet, the idea that he would detail an entire scheme for this nondescript to carry out in Peru, without speaking to his Secretary of State, who was charged with the foreign affairs of the government, is an inconceivable thing, and is the product of lying and of perjury. The face of the facts disprove it. I do not consider this man responsible. Falsehood with him is an employment and perjury is a pastime. He is not a responsible man for what he says. There was nothing in that testimony that struck my feelings as that did; to drag down the name of a great man who is gone, into the dirty puddles that he was trying to stir up for pelf and plunder.

Mr. Chairman, there was one other subject that I did converse with the President upon, and that the President of the United States was entirely familiar with from his service in the House, and which I was familiar with from my service in the Senate. And that brings me to the Landreau claim, with which Mr. Shipherd had nothing whatever to do. He had no more right to speak for the Landreau claim than he had to speak for the house of August Belmont & Co.; not a particle, and never had. His assumption was not greater in the one case than in the other, and all that he ever swore to or all that he ever stated verbally or by correspondence, as authorizing him to speak for it or to be in any way connected with it, was an entirely manufactured piece of testimony.

On this point I desire to call attention to the following letter:

"No. 1420 NEW YORK AVENUE,
"Washington, D. C., April 19, 1882.

"Hon. JAMES G. BLAINE:

"DEAR SIR: In reply to your verbal inquiry touching my relation to the claim of John C. Landreau in respect to his claim against the Government of Peru, permit me to say that it appears from my book of accounts I was employed in his behalf as an attorney-at-law on the 27th day of April, 1878.

"This employment has continued uninterruptedly ever since.

"From the time of my employment to the present, I can say with the confidence based upon full knowledge of the subject, that the Peruvian Company, so-called, has acquired no interest in nor right of control over this claim; that neither Jacob R. Shipherd nor any other officer of said Peruvian Company had any right whatever to represent this claim before the Government of the United States, nor before any officer or department thereof.

"I have the honor to be, yours, &c.,

"ROBERT CHRISTY."

That is a letter from a well-known attorney of this city, who is the attorney for the claim. When I suggested to Mr. Shipherd that Mr. Landreau was the consul for the United States at Santiago de Cuba, he did not know the man was living. When he came to speak of the Landreau claim I said, "I am familiar with it; the American representative is an officer of the State Department." And that was a totally new piece of intelligence to Mr. Shipherd; he knew nothing about it before.

In regard to the Landreau claim, I want to separate it entirely from the other; they have no connection; there is not the remotest connection between the two. Whatever there was, was by false assumption, just as much as in the use of the names of the gentlemen in New York. The President of the United States had been in the House of Representatives that, by unanimous vote just before his nomination for the Presidency in 1880, resolved "That the petition of John C. Landreau, the report made thereon by the Committee on Foreign Affairs, and the accompanying papers, be transmitted to the Executive Department, with the request that the President take such steps as in his opinion may be proper and in accordance with international law, to secure to the said John C. Landreau a final settlement and adjustment of his claim against the Government of Peru." That went to the Senate, and the Senate committee, while considering it a very proper conclusion, yet regarded it as an executive matter not to be interfered with by Congress. But the report of this honorable committee of the House was unanimous and the vote of the House was unanimous. That claim

had been twice commended by Mr. Secretary Fish to the minister of the United States in South America. It had been reported upon by Mr. Evarts; it had been approved after an elaborate examination by the law officers of the State Department, and it had the unanimous vote of the House of Representatives of the United States. I undertake to say, Mr. Chairman, that in the history of claims in the United States there has never been any one in the State Department more strongly, if so strongly, backed and indorsed by precedent and by power as that was.

Now, let us see what we did about the Landreau claim. I say, in this letter of August 4, 1881:

"In regard to the Landreau claim, I see no reason to differ from the conclusion to which my predecessors seem to have arrived. John C. Landreau was an American citizen, apparently entitled under a lawful contract to reasonable compensation for important services to the Peruvian Government. In conformity with the established practice of our government, while you cannot in such case make an official demand for the settlement of this claim, you will employ your good offices to procure its prompt and just consideration. You will have observed that in the contract made by the Peruvian Government with Landreau and his brother it is expressly stipulated that any questions arising under its provisions should be submitted to the judicial tribunal of Peru, and that in no case shall diplomatic intervention be asked. You will also notice that the supreme court of Peru, sustaining a decision of the court below, has ruled that it had no jurisdiction of this contract, thus leaving Landreau in a position in which he can neither appeal to his own government nor obtain a judgment from the tribunals to which, by the contract, he was authorized to apply."

I beg the attention of the committee to this dispatch. I considered it with great care (the Landreau part), and made full minutes, and the dispatch was framed in this particular language by Mr. Trescott. Of course I do not say that to lessen my responsibility for it, for the dispatch is wholly mine. It continues:

"While this government will not, as at present informed, undertake to construe the contract or to decide upon the extent of the compensation due Landreau, you are instructed to call the attention of the Peruvian Government to this injustice, and say that the Government of the United States will expect some adequate and proper means to be provided by which Landreau can obtain a judicial decision upon his rights. If the constitution of the Peruvian courts or the interpretation of the law by Peruvian judges deprives Landreau of the justice which the contract itself guaranteed him, then, in the opinion of this government, Peru is bound in duty and in honor to do one of three things, viz: Supply an impartial tribunal, extend the jurisdiction of the present courts, or submit the case of Landreau to arbitration. I desire also to call your attention to the fact that in the anticipated treaty which is to adjust the relations of Chili and Peru, the latter may possibly be compelled to submit to the loss of territory.

"If the territory to be surrendered should include the guano deposits which were discovered by Landreau, and for the discovery of which Peru contracted to pay him a royalty upon the tonnage removed, then the Peruvian Government should in the treaty stipulate with Chili for the preservation and payment to Landreau of the amount due under his contract. If transfer be made to Chili it should be understood that this claim of an American citizen, if fairly adjudicated in his favor, shall be treated as a proper lien on the property to which it attaches, and that Chili accepts the cession with that condition annexed. As it may be presumed that you will be fully informed as to the progress of the negotiations between Chili and Peru for a treaty of peace, you will make such effort as you judiciously can to secure for Landreau a fair settlement of his claim. You will take special care to notify both the Chilean and Peruvian authorities of the character and status of the claim in order that no definitive treaty of peace shall be made in disregard of the rights which Landreau may be found to possess.

"I am, &c.,

"JAMES G. BLAINE."

To which General Hurlbut replied:

"In the Landreau case the proofs are sufficient, and the condition in which the Peruvian Government has left the complainant forms a just ground for a decided appeal to their sense of justice. I shall follow the direction in your dispatch and interpose on behalf of this and all other American claims, if any negotiation takes place between Peru and Chili which involves the loss of territory. I shall take special care that this claim and the attitude of the United States in respect to it be officially made known to the proper authorities of both governments."

On the 17th of November I wrote to General Hurlbut:

"Your proposed course in regard to the Landreau claim is approved; but that claim must not, of course, be pressed in any manner that would seem to embarrass Peru in the hour of her great distress. Your previous instruction to use your good offices in procuring an adjudication of the Landreau claim was made in view of the possible fact—of which there was wide rumor—that numerous French and English claims were to be presented, in which event I was anxious that the resources of Peru should not be exhausted in the settlement of other claims to the prejudice and detriment of one

belonging to an American citizen. You will still be guided by the spirit and intent of that instruction."

That is all that I wrote to General Hurlbut about the Landreau claim. I was very much struck, however, with this part of the committee's investigation, and if the honorable member of this committee will be good enough to assist me a little in this matter, I would like to call his attention to it. I notice on page 139 of the testimony that Mr. Belmont, a member of this committee, stated, as prefatory to a question, that "on the 16th of December Mr. Blaine wrote his last dispatch to South America, in which he says, in effect, that there shall be no treaty of peace without a recognition of the Landreau claim."

Mr. BELMONT. I suppose, Mr. Blaine, that all questions in regard to my examination will come up more particularly when I have the right to question.

Mr. BLAINE. I only wish to call your attention to it.

Mr. BELMONT. I do not care to enter into a discussion of that at present.

Mr. BLAINE. I wish to comment on it only. Mr. Belmont, a member of the committee, has been pleased to construe what I said into this question; I will repeat the way he puts the question: "On the 16th of December Mr. Blaine wrote his last dispatch to South America, in which he says, in effect, that there shall be no treaty of peace without a recognition of the Landreau claim." What I said was as follows: (This was to Mr. Trescot.)

"While disabusing the mind of the Chilean Government of any impression that the United States meditates intervention on behalf of private claims, beyond the use of its good offices, you will say that justice seems to demand that Landreau should have an opportunity to be heard in support of his claim before a tribunal in Peru competent to decide it, and that, if decided in his favor, a treaty of peace which might cede territory to Chili should not be made in disregard of any rights which Mr. Landreau may be found, after an impartial judicial investigation, to possess.

"Further than this the Department of State has not felt authorized to go, and I must express the hope that the governments of Peru and Chili, to both of which you are accredited, will recognize the moderation and justice of the request made by this government.

"I am, &c.,

"JAMES G. BLAINE."

Mr. Belmont translates that that I declared that no treaty of peace shall be made unless the Landreau claim is provided for. That is the freest translation of plain language that I have ever met.

Mr. BELMONT. As I said before, I prefer not to enter into any discussion at the present time.

Mr. BLAINE. Oh! I am not here for discussion; I am here for examination.

Mr. BELMONT. Exactly; but you say this is a free translation.

Mr. BLAINE. Well, you put words in my mouth which I never uttered; that is all.

Mr. BELMONT. I did not do anything of the kind.

Mr. BLAINE. Then you are incorrectly reported.

Mr. BELMONT. That may be.

Mr. BLAINE. I only took the report which the committee sent me.

Mr. BELMONT. Oh! I think I am correctly reported, but I think it is preferable to wait until my turn comes for examination, and then I will explain perfectly what I mean.

Mr. BLAINE. I only meant to say that you were quoting language that I never used.

Mr. BELMONT. I think it is unnecessary to say so at present; we will see when the time comes.

Mr. BLAINE. Further above that, in a passage which I read, Mr. Belmont quotes me as saying: "No treaty of peace between Chili and Peru shall be made unless there is a recognition of Landreau's claim as a prior lien upon any territory which Peru might be required to cede to Chili." That is on page 122. I am at a loss, in my own dispatches, to find any such language. I merely notify Mr. Belmont, so that he can at the proper time show where it exists.

Mr. BELMONT. Certainly. On what page was that?

Mr. BLAINE. I find the latter on page 122.

Mr. BELMONT. As there were no courts in Peru at that time, I consider that the claim could not be adjudicated; but, of course, all those questions will come up later.

Mr. BLAINE. All I object to is what I see put in quotation marks; language which I never used.

Mr. BELMONT. Well, that is a mistake so far as that goes.

Mr. BLAINE. Then you do not attribute that language to me?

Mr. BELMONT. I say that the quotation marks are probably a mistake.

Mr. BLAINE. Do you mean still to say, that you attribute that language as having been used by me and as being quotable from my dispatches—the part I have read?

Mr. BELMONT. I mean this—

Mr. BLAINE. I don't care what you mean; I want to know whether you attribute the language which you have, in two places, put in quotation marks, as included in a dispatch—whether you attribute that language to me?

Mr. BELMONT. In the first place, I did not put the words in quotation marks.

Mr. BLAINE. No; you did not set up the type; that I understand. But the language is in quotation marks and it was set up from copy that comes from here, and is done at the very accurate printing office of the government. Did you see the proof?

Mr. BELMONT. I did not.

Mr. BLAINE. Have you ever read it since it was reported?

Mr. BELMONT. If I have, it was very carelessly.

Mr. BLAINE. I should think so; very carelessly if you attribute that language to me, which I never used.

Mr. BELMONT. I do not think it necessary to continue in that line of remark.

Mr. BLAINE. Mr. Chairman, I believe I have run five minutes over my time.

The CHAIRMAN. I understand that the business in the House is such that we can continue for fifteen or twenty minutes longer if it is desired; or, we will adjourn now, as the committee desires.

Mr. BLOUNT. I did not understand that the witness was limited to a given time in which to make his statement.

Mr. WILSON (to Mr. Blaine). Do you want the time extended?

Mr. BLAINE. I have, I think, gone over what I intended to say; but, of course, I submit myself now to the examination of the committee, which I should prefer to have begun to-morrow.

Mr. KASSON. I want to move to adjourn, if Mr. Blaine has finished what he considers his principal connected statement.

The CHAIRMAN. Mr. Belmont, I believe, is endeavoring to be heard.

Mr. BELMONT. I shall not attempt to make any statement or answer to Mr. Blaine's implications further than to say this: That the report of my examination is perfectly correct. The quotation marks I am not responsible for; the meaning of my question I am responsible for. What I mean to say is this: That according to the instructions of Mr. Blaine to Mr. Kilpatrick of June 15, and of August 4 to Mr. Hurlbut, it is stated that there are no courts in Peru; that the country is in a state of dissolution, and that unless this claim is first adjudicated, there shall be no treaty of peace made.

Mr. BLAINE. No, sir; there is nothing said like that, or anything that can be distorted into it. Please do not read from your notes, but read from my dispatch that contains it. I will furnish it to you. I will be very much obliged to you if you will show me anything in my dispatch that says that, or is a shadow of it, or that resembles it, or anything that can be distorted into it. If you can do so I will be obliged to you.

Mr. BELMONT. I am taking the dispatches as a whole; therefore I think it is much preferable—both for the witness and for the examiner, certainly for myself—to wait until the cross-examination comes up before any statements are made. Then I shall be willing to enter into the discussion.

Mr. BLAINE. I wish to repeat that I merely wrote to Mr. Trescot that “while disabusing the mind of the Chilean Government of any impression that the United States meditates intervention in behalf of private claims, beyond the use of its good offices, you will say that justice seems to demand that Landreau should have an opportunity to be heard in support of his claim before a tribunal in Peru competent to decide it, and that, if decided in his favor, a treaty of peace which might cede territory to Chili should not be made in disregard to any rights which Mr. Landreau may be found, after an impartial judicial investigation, to possess.”

Mr. Belmont says that “on the 16th of December Mr. Blaine wrote his last dispatch to South America, in which he says in effect”—

Mr. BELMONT. “In effect”; yes, sir, I say so still.

Mr. WILSON. I suggest, Mr. Chairman, that it is much better to proceed in this matter regularly, and if the witness has made his statement then let the regular examination proceed. I think this is entirely out of order.

Mr. BELMONT. I did not call it up; it is the witness himself who commenced it.

Mr. BLOUNT. I would like to inquire at what time we shall meet to-morrow.

The CHAIRMAN. It is suggested that the committee may be otherwise engaged to-morrow.

Mr. BLAINE. I desire if possible to make my statement on continuous days.

The CHAIRMAN. If it is thought desirable, the committee might meet to-morrow afternoon; but to-morrow morning a matter is coming up which requires the attention of the committee in the House.

Mr. BLOUNT. I hope there will be no afternoon session.

The CHAIRMAN. I think we had better adjourn until Wednesday.

Mr. ORTH. I would inquire of Mr. Blaine whether an afternoon session would suit him.

Mr. BLAINE. I would rather not go on this afternoon. My throat troubles me somewhat.

Mr. WALKER. I understand Mr. Blaine to have concluded his main statement.

Mr. BLAINE. Yes, sir; unless something else is desired in the way of questions.

Mr. BLOUNT. On Tuesday we shall have another important meeting which cannot be postponed.

The CHAIRMAN. The hearing will then stand adjourned until 10 o'clock Wednesday morning the 26th instant.

WASHINGTON, D. C., *April 26, 1882.*

The committee met pursuant to adjournment.

Hon. JAMES G. BLAINE appeared, and his examination was resumed.

The CHAIRMAN. The committee will please come to order. [To the witness.] Do you desire, Mr. Blaine, to go on with your statement?

The WITNESS. Before entering upon that I beg leave to make a short statement quite outside of my duty as a witness. I have observed in the press reports that through some mistake they have included Ex-Senator Eaton as among the counsel from whom I read a letter touching Mr. Shipherd's case. I read no letter from Mr. Eaton, and submitted none, and I hope the press will make this correction. It is just to him to make that statement.

I wanted to make another statement in connection with some observations which I submitted to the committee in disproof, as I thought, of the fact that any such interview as Mr. Shipherd related in his testimony had been held between the President and General Hurlbut, resulting in the sending by him of the elaborate message to Mr. Shipherd. I had sought for, but had not then obtained, a piece of testimony which, although negative in its character, is of very great consequence in my mind, and which I have the privilege of narrating. The President was in the habit of keeping a very correct and, I might say, a very minute diary of events. That had been a habit which had grown upon him from his college days; and there is at the present time in the hands of his family a transcript of his life, every day of it—not every day equally full, but a complete diary of every day, probably, from the time he left Williams College. Whether it is so absolutely continuous as that or not I do not know, but I presume it is. At all events, I know that during all his Congressional life he kept a very minute diary of the personal, public, and private events in his life.

I have caused the diary of President Garfield during all the period that was covered by the events testified to by Mr. Shipherd to be searched, and the result is, that neither Mr. Shipherd, nor Mr. Hurlbut, nor the Cochet claim, nor the Peruvian Company, are alluded to or mentioned in any way whatever, directly or indirectly, nor were any of those subjects spoken of by him to those with whom he was in the most intimate and daily association outside of official associations; nor does his private secretary, who was literally at his elbow all the time, remember any interview whatever, of any length possible, between Mr. Hurlbut and the President. I do not say that Mr. Hurlbut did not see the President to simply salute and say good bye to him; I think it is very probable that he did. But beyond that I am very sure there was no conversation between them whatever.

I regard (and if I could impress the committee with the knowledge I had of the President's habit touching his diary, I am sure they would regard with me) this testimony as in its nature conclusive upon that point.

I don't know, Mr. Chairman, that I desire to take up the time of the committee further in any voluntary narrative beyond the points which I brought in review on Monday last. But as I have observed in the course of this investigation that the committee (as Congressional committees usually do, and probably almost of necessity) have gone beyond the strict limits of the resolution by which they were instructed, I now beg to say that, accepting that as the course of the committee, I am perfectly willing, and am desirous, that every possible question, direct, indirect, and collateral, growing out of this subject, or appertaining unto it in any manner whatever, involving the whole of the South American policy under President Garfield and under President Arthur, may be inquired of by this committee. I am not conscious of any question which it is within the ingenuity of man to address to me, which I shall have the slightest possible hesitation in answering; and if I can answer it intelligently I am ready to do it. It is something which, so far from desiring to conceal, I desire to unfold; and if this committee have any inquiry to make in the same spirit, I am here to submit myself to it.

The CHAIRMAN. I will say to Mr. Blaine that the committee experience the embarrassment which is suggested; that this is unlike a case in a court of justice, where the rules of evidence apply. We have endeavored to restrain the inquiry strictly within

the spirit and letter of the resolution ; but it has gone into collateral matters in spite of that.

The WITNESS. I have never known a Congressional committee in which it was not so ; it transcends its jurisdiction very rapidly.

The CHAIRMAN. In this connection I will inquire if any of these important dispatches pertaining to South American affairs were prepared during President Garfield's sickness ?

A. No, sir ; and I am very much obliged to you for asking me the question ; because there has been no misrepresentation in the press more widespread than that I had assumed the right to plunge the government into certain policies while the President was on his back and unable to direct affairs. So far from that, the diplomatic correspondence, when it is fully published, will show (as this published already does show) by its dates that there was no decisive action whatever taken during the President's illness. Nor is it true in regard to any other field in which the diplomacy of the administration was called into action. There was possibly one exception, not a very grave or important one, in some matters which will be forthcoming in the publication of dispatches relating to Venezuela. But all that were written during the President's illness were thoroughly talked over on several occasions between myself and the President before the assassination ; and I knew in what I did that I was carrying out with great explicitness the views of the President.

I desire, by way of illustrating this question, to make this statement : On the 24th of June the State Department issued a circular letter to our ministers in Europe touching the policy of the United States in regard to the interoceanic canal. That letter, addressed to all of the governments of Europe, did not afford scope for the discussion of an obstacle that lay in the way of the policy, which was the Clayton-Bulwer treaty. As that related especially to England, it was not deemed wise or proper to make any allusion to it into the letter, which was a circular to all of the other powers as well as to England.

But, practically, both the communications—both the papers—were prepared at the same time ; that is, the original circular letter of the 24th of June when sent had the sequel to it blocked out, and so far blocked out that the President and myself had gone over the points to be presented, and the notes upon it were very full. That, when the President was shot, was laid aside, and was never withdrawn from its pigeon-hole until President Arthur had been thirty or forty days in the exercise of his Presidency, but was sent weeks after he had succeeded by reason of the President's death. I give that as an illustration on a very important point, which is the literal truth of the whole Peruvian and Chilian question—that no important step was taken involving the policy of the government on any important point whatever, except with the consent and knowledge and the direction of one or the other of the two Presidents. I want to make that statement as broad as language can make it.

The CHAIRMAN. In that connection I would be glad to have you explain, as fully as you may deem proper and material, the practice of the Secretary of State in regard to his relations to the President, in the preparation of his instructions to any of our South American ministers, including General Hurlbut and Mr. Trescott.

The WITNESS. Your question is a comprehensive one, and I may possibly give it a comprehensive answer.

The CHAIRMAN. I simply submit it as a suggestion for you to make such answer upon as you may deem necessary.

The WITNESS. In regard to the preparation of dispatches, of course I am always loth to quote anything of the dead, and I never would quote a controverted point. But the President of the United States, now deceased, very shortly after I had brought a matter of diplomacy before the Cabinet, said to me : "Mr. Lincoln directed Mr. Seward to bring all his foreign matters to him, and not to introduce them into the Cabinet unless he was directed and requested to do so." He said, "The policy of the United States in relation to foreign matters is peculiarly and entirely an Executive matter, and when the advice of the entire Cabinet is needed, it is for the President to ask it, and not for the Secretary of State to bring it in." I do not mean that this was in contradiction or in reprimand of anything, but it was laying down a policy. From that time forward I never introduced anything to the Cabinet except at the request of the President.

At the same time, the habit of the Department of State under all administrations, I think, has been, so far as I have been able to gather it, not to load the President down by calling upon him with every petty detail or letter, but wherever a prominent matter indicating a change of policy, or anything that would in any wise commit the government to any important step, came up, action would never be taken by a prudent Secretary of State, except with the consent and advice of the President. And I am very sure that I make a statement of great moderation when I say that no step committing this government to anything whatever of importance—no step outlining or prefacing any policy that would involve the government in any direction whatever—was ever taken by me in the ten months I was Secretary of State, without the knowl-

edge, consent, cheerful willingness, and advice either of President Garfield or of President Arthur.

In illustration of that I have brought with me these papers. There has been an attempt made, of which of course I acquit the President entirely (I am not discussing President Arthur), to show that some great troubles were precipitated in South America, or were about to be, by an alteration made by me, as Secretary of State, in instructions to Mr. Trescot, which I have taken occasion to deny in interviews which are somewhat unofficial; and I am very glad to have an opportunity to do so officially and under oath. I hold here in my hand the original dispatch that was submitted to the President of the United States. I did as Secretaries of State have been, I believe, in the habit of doing; I retained the original drafts of the dispatches, which I was responsible for, of course. The press copies and the official ones were left in charge of the department, but the original drafts were kept by myself. That was according to precedent. This is the draft of the dispatch of instructions to Mr. Trescot, about which there has been a great deal of public criticism, and concerning which and in which I have been charged with making alterations. That was read to the President the first time, with some suggestions of change not very material; some were made by myself and some by him; none of them of great significance, because the dispatch was intended to be, and should have been, and was, kept a confidential dispatch.

It was not a dispatch to be shown to the Chilean authorities, or to the Peruvian authorities. It was a dispatch for the guidance and direction of our minister, and was, in so far as anything could be, a confidential dispatch. That was first read to President Arthur with his assent, and I will show to the committee the precise corrections that were made. In the first place I would preface it a little more by saying that after it was resolved to send Mr. Trescot to South America I blocked out, partly in detail and partly in a general direction, the instructions under which I wished him to go; and I said to him, "Now, Mr. Trescot, you complete those instructions." He took my memoranda, and to some things which I had written not fully, he added a considerable portion. Partly from my own manuscript, partly from his, a clean copy was made (that is, it was clean in those days at least) by copying clerks in the State Department, and the manuscript of both Mr. Trescot and myself went to the waste basket, and this became the draft of the dispatch. This draft was read to the President, and I will indicate the corrections that were made. They will be seen not to be very important. For instance, on the 14th page of the original dispatch it read: "If our present information is correct, immediately upon the receipt of this communication they arrested President Calderon," &c. That was a communication of which I will give the context. In speaking of the recognition of the Calderon government it says:

"As soon as these facts indicated the possibility of a real and independent vitality in the constitution of the Calderon government the Chilean military authorities issued an order forbidding any exercise of its functions within the territory occupied by the Chilean army—that is, within the entire territory west of the mountains, including the capital and ports of Peru.

"Unable to understand this sudden and, giving due regard to the professions of Chili, this unaccountable change of policy, this government instructed its minister at Lima to continue to recognize the Calderon government until more complete information would enable it to send further instructions. If our present information is correct, immediately upon the receipt of this communication, *which was transmitted over the lines of telegraph under the control of the Chilean authorities*, they arrested President Calderon, and thus, as far as was in their power, extinguished his government."

The President suggested that that was, indirectly, an accusation that the Chilean authorities had tampered with the official telegrams of the United States; and I admit that it was that, and I admit that it was intended to mean that, and they need not be so delicate about it since, because they have been tampering with our mails. Probably the President himself would not be so delicate to-day about it, inasmuch as a United States vessel of war cannot receive her mails from a steamer, except with the *viséed* inspection of a Chilean corporal. British mail for British vessels can go on board, with banners flying and drums beating, in the harbor of Callao, but vessels of war of the United States, for the first time in the history of the South Pacific squadron, are deprived of the privilege of having their letter-bag handed to them over the deck until it has gone through the inspection of the Chilean officials. But the President did not at that time think that accusation ought to be made, and, of course, I was but a servant of the President, and the portion I have italicised was stricken out; a line was drawn over it in the President's bed-chamber. I was sitting in his bed-chamber with him when that was done. I want to be specific about that.

The CHAIRMAN. I will say, perhaps in justice to myself, that the inquiry was directed to the general practice, but, of course, the committee do not feel that it is proper to check Mr. Blaine and prevent his answering the question in his own way.

The WITNESS. I will submit myself to the committee.

The CHAIRMAN. As the subject has been opened, of course it had better be finished.

The WITNESS. There was a trivial correction made on the 22d page, where the word "government" was used, and to show which government was meant, the words "of the United States" were added. That, however, was merely verbal. On page 27 there was a correction which the President desired to have made, and which I thought he was correct in making. I thought afterwards that the language was a little sharp, but I think it was the President who first suggested it. Yet, I think if he had not suggested it, upon review I should have struck it out myself. I will read that in connection, so that the committee may have a full understanding of it:

"Nor can this government admit that a cession of territory can be properly exacted far exceeding in value the amplest estimate of a reasonable indemnity.

"Already, by force of its occupation, the Chilean Government has collected great sums from Peru; and it has been openly and officially asserted in the Chilean Congress that these military impositions have furnished a surplus beyond the cost of maintaining its armies in that occupation. The annexation of Tarapacá, which, under proper administration, would produce annually a sum sufficient to pay a large indemnity, seems to us to be not consistent with the execution of justice."

And I added:

"It might indeed be mistaken for the extortion of power and the gratification of revenge."

I thought it was well to strike that out. It was better rhetoric than it was diplomacy, although not struck out because of its untruth; it was entirely truthful.

On page 32 it was stated:

"As it is probable that some time will elapse before the completion of all the arrangements necessary for a final negotiation, this government would suggest a temporary convention, which, recognizing the spirit of our *pending intervention*, would bring Peru and Chili into amicable conference, and provide for a meeting of plenipotentiaries to negotiate a permanent treaty of peace."

Well, "intervention" was a little too strong a word, the President thought, and that was changed to "*the spirit of our present friendly representation*." That change was made as the President suggested. Then at the end I suggested myself a change which I thought would relieve it from all possibility or liability to misunderstanding, and added it on a piece of different colored paper and pasted it on, as follows:

"You will not indicate any wish that the Government of the United States should act as umpire in the adjudications between the contending powers. Should an invitation to that effect be extended, you will communicate by telegraph for instructions. The single and simple desire of this government is to see a just and honorable peace at the earliest day practicable, and if any other American government can more effectively aid in producing this auspicious result, the United States will cordially sustain it and lend such co-operation as the circumstances may demand."

That was added by myself. That was on the first reading. The President naturally desired to have it read a second time, and, after the lapse of two or three days, it was taken up again with an addition of considerable length in the handwriting of Mr. Trescot. In the argument of the dispatch at the beginning, it was shown that we in the United States had recognized the Calderon government in supposed compliance with the wishes of Chili; that Chili in that way having secured the aid and recognition of the United States, should not have destroyed that government without some consultation or notification to us. And in the original draft of the dispatch a material point was left out in not quoting the dispatch of General Kilpatrick, which gave the words of Balmaceda, minister of foreign affairs for Chili. That was added from General Kilpatrick's dispatch and placed in at the 11th page (I need not read it) and became a part of the dispatch, and was read to the President on the second reading. This does not involve anything about which there has been a dispute; I only give it in order to be exhaustive and precise in my testimony.

I have never believed or credited in the least degree the statement that the President was answerable in the remotest manner for the assertion that these instructions, which were afterwards revoked, had been made in any way different from his desire; it would be inconceivable, although I am not speaking of him as a President with the responsibilities of that great position upon him, but I am speaking of him in the relation that one gentleman has to another—a mere question of honorable good faith and gentlemanly veracity.

That is the identical dispatch, word for word, which he approved and which afterwards, for reasons of course sufficient to him, he largely revoked. For the President's change of mind I am not, of course, responsible; but that I ever interpolated a word, or a line, or a syllable, or an idea, is as absolutely false as any statement that was ever made; just as false as the statement that flew over the country that during the President's illness I was blocking out a great foreign policy and precipitating it upon the country between the lives of two Presidents. Both were without the slightest foundation of fact whatever. I should be very glad to answer any question touching that which any gentleman may ask.

The CHAIRMAN. Is there any further statement which you desire to make in regard

to these affairs—the South American policy, while you were Secretary of State, as it stands connected with Minister Hurlbut, the Peruvian Company, or any South American interests?

The WITNESS. I could make a stump speech on that lasting three days, Mr. Chairman. I would be glad to have the questions made as specific as possible, so as to give me something to which I can directly address myself.

The CHAIRMAN. I have no specific questions that I desire to ask at this time; I simply desire to give you an opportunity in this connection to make any additional statement.

The WITNESS. I would like to go over these topics, of course, but I would like to go over them in some classified way, so that I should seem to be talking in a direct way in a line in which the committee would indicate.

The CHAIRMAN. As I said, I have no questions which I desire to put at this time. I was willing to trust to Mr. Blaine's discretion as to any prominent point which he desired to state in this connection, if there was any. If not, we will call on other members of the committee to put interrogatories. I do not press the suggestion.

The WITNESS. O, I want to take it up, only I am waiting for some member of the committee to make some more specific inquiry. I am very much obliged to the chairman for his consideration.

The CHAIRMAN. Then I will waive the formal rule and call on any member of the committee to put such interrogatories as he may desire at this time. (To Mr. Belmont.) Do you desire to put any questions to the witness?

Mr. BELMONT. Yes, I have some questions to ask Mr. Blaine. (To the witness.) Will you state whether you made any personal examination of the title to the Cochet claim against Peru, which the Peruvian Company or Mr. Shipherd's associates professed to hold?—A. No, sir; I never did.

Q. From whom did the Peruvian Company or Mr. Shipherd's associates profess to have received a title to the Cochet claim against Peru?—A. So far as they communicated to me, from its owner in Peru; I so understood it.

Q. You do not know, then?—A. No, I do not.

Q. Would the claim against Peru, in your opinion, have been entitled to the assistance of this government if presented by Cochet, and Cochet had been naturalized as an American citizen?—A. That would depend upon whether the claim had accrued before the naturalization or after.

Q. Is that the answer?—A. If I understand the question, it is. If he had a claim against Peru after he had become an American citizen, that had accrued after he became an American citizen, he would be entitled to it just as much as if he was a native citizen.

Q. Who, if any one, presented to you the claim of J. C. Landreau against Peru?—A. It was presented by the Congress of the United States, by the unanimous recommendation of this committee, and by a vote of the House of Representatives.

Q. Then it was presented by no person?—A. No, sir; it was not lobbied at all by anybody; it had no big company to back it. There had been a regular attorney for it, and it was a matter which the Congress of the United States had deemed of sufficient importance to call the attention of the Secretary of State to.

Q. Then there was no attorney who presented the claim to the department?—A. Mr. Christy had been the attorney here—a modest gentleman who stood as the representative of it.

Q. Did he present it?—A. No, sir; not to me personally.

Q. He did not?—A. No, sir.

Q. He stated he was the attorney, I believe, in January, and in April.—A. I have read his letter. He was four years the attorney.

Q. Did you make any personal examination of that claim previous to your note of August 4, 1881?—A. It had been made very elaborately under Secretary Fish, under the law department, and under the House of Representatives.

Q. I ask you, did you make any personal examination of it?—A. No, sir; I took that as *res adjudicata*; I took the opinion of the law officer of the State Department, and the opinion of the House of Representatives of the United States; I made no examination besides that.

Q. Was not J. C. Landreau an assignee of a portion of the claim against Peru held by his brother who was at the time of the assignment, and is now, a citizen of France?—A. I think the understanding of the claim was that it fell equally to Théophile Landreau and his brother, J. C. Landreau, the one being an American citizen and the other a French subject; and the House of Representatives, when they passed the resolution requesting the State Department to make such intervention in its behalf as was proper, instructed it also, if it considered it proper to do so, to invoke the co-operation of France.

Q. Yes, I will come to that resolution in a moment. Did J. C. Landreau, in your opinion, become entitled by the assignment from his brother to himself, to present the claim against Peru, or was he only entitled to receive from his brother a portion of

what the latter might obtain from Peru?—A. I do not know that I ever argued those points. The rule of the State Department is, as in all well-arranged bodies, that where you find a case thoroughly adjudicated and passed upon, to accept the *res adjudicata*, and I never gave it any elaborate consideration of that kind. You will find in the book I have here in my hands a very full exposition by Secretary Evarts, in a report made to the House of Representatives, and a very full exposition by Mr. Henry O'Connor, the law officer of the department, acting under the direction of Secretary Fish; all possible questions that you could desire to ask in regard to the Landreau claim would be answered in this.

Q. I have seen those reports and I shall come to them in a moment. What I want to know is whether you ever made any personal examination of that claim?—A. I have answered you already that I did not. It would be of no account for me to do it.

Q. You considered the case already adjudicated?—A. Yes, sir; so far as the department was concerned, and it had the additional adjudication of the House of Representatives, and in addition the unanimous report of this committee.

Mr. BELMONT. Yes, so you have stated just now.

The WITNESS. I do not want the gentleman to lose sight of that fact.

Mr. BELMONT. I will come to that in a moment. Before writing to General Hurlbut your note of August 4, 1881, did you submit the claim of Landreau to the Department of Justice, or to the Attorney-General of the United States, for an opinion respecting the validity of that claim against Peru?

The WITNESS. No, sir; it would have been a very extraordinary proceeding to have done that.

Mr. BELMONT. I only want to know whether you did or did not.

The WITNESS. Oh, no; you only want information. I do not care to give monosyllabic answers. I want to say it would have been a very extraordinary and unprecedented proceeding to have done so.

Mr. BELMONT. Did you or did you not?

A. I did not; and for the reason, Mr. Chairman, that it would have been an unheard of, unprecedented, and an ignorant proceeding.

Mr. BELMONT. Of course that is a matter of opinion.

The WITNESS. Oh, no; it is a matter of practice in the department.

Q. Was not the note addressed by Mr. Fish to Mr. Thomas, then American minister at Lima, dated in July, 1874, subsequent to the opinion given by Mr. O'Connor?—A. It was based upon that.

Q. But subsequent to that opinion, if you please?

The WITNESS. Subsequent to what opinion?

Mr. BELMONT. Subsequent to the opinion given by Mr. O'Connor, the examiner of claims in the State Department, which opinion was in favor of J. C. Landreau.

The WITNESS. Was it not addressed after that?

Mr. BELMONT. Yes, after that.

The WITNESS. It was addressed not only after that, but in consequence of it.

Mr. BELMONT. I only want to know whether it was addressed after that.

The WITNESS. Afterwards and in consequence of it; based upon it; if the gentleman wants information, I will give it to him. It was addressed by Secretary Fish *after* the opinion of the law officer of the State Department, and in consequence of that opinion; and had the opinion been otherwise, Mr. Fish would not have addressed the note.

Mr. BELMONT. When we come to the note we will see what the note was—

Mr. BLAINE. O, precisely.

Mr. BELMONT. — which was addressed after this opinion of Mr. O'Connor.

The WITNESS. Mr. Belmont, I will inform you right here that when the Secretary of State refers a question to the law officer of the department for his opinion, he waits until that gentleman replies to it before he writes a communication to be based on it, and in the order of time that comes after and not before; naturally it was *after*.

Q. The point is whether he considered that report as entitling him to go as far as—

The WITNESS. As he did go?

Mr. BELMONT. Certainly, and as you yourself went?

The WITNESS. Well, I did not go any further than he did.

Mr. BELMONT. That remains to be seen.

The WITNESS. But as you are quoting the word “after” so frequently, I will say, although I have said it several times, that when a communication is addressed by the Secretary of State based on the opinion of the law officer of the department, the communication on which it is based is always given after; *always*.

Mr. BELMONT. I suppose that that will not be any new information to any member of this committee. But my point is whether or not you went further in your instructions than did Mr. Fish. Now, then, did not Mr. Fish, in his letter to Mr. Thomas of July, 1874, which, as you very correctly stated, was addressed *after* he had received the report of the law officer of the department—for I suppose nobody would ever think you would have done it before—

The WITNESS. Your original question indicated that you might have thought so.

Mr. BELMONT. It might have so indicated to the witness, but I think to no one else. It is clear that, in the opinion of the Department of State, the claim of Landreau belonged to that class of claims regarding the settlement of which it is a settled practice of this government not to interfere beyond the exercise of its good offices.

The WITNESS. That is, of course, true.

Mr. BELMONT. Very well. Was not Mr. Thomas, in that connection, distinctly instructed by Mr. Fish that he was only authorized to make use of his good offices, unofficially, with the Peruvian authorities in behalf of Mr. Landreau, with a view to securing for him from that government a speedy investigation and adjustment of his claim?

The WITNESS. Yes, and that is all I ever asked; no Secretary of State has ever asked any more.

Mr. BELMONT. "Unofficially" is the word I call your attention to.

The WITNESS. Well, as you are entirely posted in diplomatic affairs, will you please tell me at that point the difference between good offices "unofficially" and good offices "officially," and then I will give you my opinion afterwards.

Mr. BELMONT. If you consider me so well versed in diplomatic affairs, I will take the liberty of saying that I consider that it is I who am asking the questions and not the witness.

The WITNESS. But the witness has occasionally the right, however, to correct the examiner if he asks a wrong question.

Mr. BELMONT. A correction is a very different thing from a question. On December 16, 1881—

The WITNESS. Just at that point, Mr. Belmont, I would like to say that one of the corrections which it is the right of the witness to put in will now be offered.

Mr. BELMONT. Very well.

The WITNESS. Instead of taking detached and little patches out of Mr. Fish's note, it is well to get the whole note in. Now, this is what Mr. Fish said:

"No. 92.]

"DEPARTMENT OF STATE,
"Washington, July 25, 1874.

"SIR: Referring to your dispatch No. 61, of the 16th of July, 1873, and the department's instruction No. 37, of the 18th of March previous, in relation to the claim of Mr. J. C. Landreau against the Government of Peru, I have now to inform you that in a letter recently received from Mr. Landreau that gentleman again invokes the interposition of this government, with a view of securing for him a recognition and settlement of his claim by the Government of Peru.

"You are already in possession of the facts in relation to this claim, and the documents and proofs presented by Mr. Landreau in support of it are accessible to you from the files of your legation. The claim in question being one growing out of a contract which appears to have been voluntarily entered into by Mr. Landreau's brother with the Peruvian Government, belongs to that class of claims regarding the settlement of which it is the settled practice of this government not to interfere beyond the exercise of its good offices."

In the very last dispatch which I ever wrote to Mr. Trescot I disclaimed for Peru any intention of this government to interfere beyond the exercise of its good offices; I never went a step beyond that. I will continue to read from Mr. Fish's dispatch.

"And even this latter action is confined to cases in which some special features of an equitable character are found to exist. Upon a recent examination of this case by the department it has reached the conclusion that the claim of Mr. Landreau is entitled to some consideration on these grounds. You are consequently authorized to make use of your good offices, unofficially, with the Peruvian authorities in behalf of Mr. J. C. Landreau, with a view of securing for him from that government a speedy investigation and adjustment of his claim. It is also desired that you will keep the department advised of your action in relation to the matter, and of any results that may accrue therefrom.

"I am, sir, your obedient servant,

"HAMILTON FISH."

Now, when Mr. Evarts made the report to Congress for the action of this committee two years ago, in which this was one of the documents included, Mr. Evarts stated:

"A copy of the instruction addressed by the department on the 25th of July, 1881, to the United States minister at Lima, Mr. Francis Thomas, in which he was, pursuant to the opinion of the examiner of claims, instructed to use his good offices in the adjustment of the claim, is also transmitted."

Now, the word "unofficial" is some times put in dispatches in order to qualify the opinion of the department that in no sense is a demand to be made for a payment. When General Jackson had his troubles with France he made a demand. When we had our war with Mexico we had several times made a demand for the payment of

claims; that means we are going to enforce it. In the other case, where you extend good offices, it is only giving a distinct intimation that while it is believed to be a just claim, and every rule of justice demands that the man should be treated fairly, it is not the intention of the government to make a demand upon it to be backed up by force. Mr. Fish took that ground about it, and no other ground has ever been taken anywhere; nothing whatever. Just let me at this point —

Mr. BELMONT. May I ask is that the explanation of what "unofficial" means?

The WITNESS. Certainly it is the explanation. You will see that Mr. Evarts with that letter before him made a careful report and omitted that. He states that Mr. Fish instructed Mr. Thomas to use his good offices.

Mr. BELMONT. Then that is your understanding of what the word "unofficial" means?

The WITNESS. Certainly it is. It is just a further careful qualification that this man is to have all done for him that can be done by the kindly action of the minister, but it is not a case in which this government is ever going to make a war; that is all that was ever done about the Landreau claim by anybody. As to my making any further demands about it, if Mr. Belmont desires information and is after it —

Mr. BELMONT. Yes, I should very much like to know what your explanation of the word "unofficial" is.

The WITNESS. I have given it already; that is my explanation. If the honorable examiner has any further explanations to suggest, I shall be glad to be enlightened.

Mr. BELMONT. O, I have none; I am only in search of information.

The WITNESS. Well, on that point you have come to just where you can get it, then.

Mr. BELMONT. Exactly. Now, on December 16, 1881, you informed Mr. Trescot that "on the 20th of July, 1874, my predecessor, Mr. Secretary Fish, instructed our minister at Lima to use his good offices with the Peruvian authorities in behalf of Mr. John C. Landreau." If Mr. Fish on that occasion only authorized Mr. Thomas to make use of his good offices, unofficially, do you consider that your instructions to Mr. Trescot contained a fair and correct representation to him of the instructions of Mr. Fish to Mr. Thomas?

The WITNESS. Yes, the same as Mr. Evarts made in his official communication here.

Mr. BELMONT. But I am asking you now.

The WITNESS. I am telling you that I did exactly the thing Mr. Evarts did in a formal report to the House of Representatives relating to the same dispatch.

Mr. BELMONT. But that is not an answer to my question.

The WITNESS. What was your question? That I considered to be fair —

Mr. BELMONT. Wait a moment. If Mr. Fish on that occasion only authorized Mr. Thomas to make use of his good offices officially, did you consider that those instructions to Mr. Trescot contained a fair and correct representation to him of the instructions of Mr. Fish to Mr. Thomas?

The WITNESS. Of course.

Mr. BELMONT. You did?

The WITNESS. Of course; and nobody who knew a solitary A, B, C of diplomacy would think otherwise.

Mr. BELMONT. I am only asking your opinion.

The WITNESS. Yes, and I am giving it, emphatically; and I say no one except one entirely ignorant of diplomacy would think otherwise. I used exactly the language of Mr. Evarts.

Mr. BELMONT. But that is not the thing I asked.

The WITNESS. I hope, Mr. Belmont, you will be a gentleman, and I will try to be one, too. But I am not here as a witness in a police court to be badgered; I am here to answer questions if you will permit me to answer them as I desire. But don't you attempt to correct me in my answers. You may ask me what you please, but don't you attempt to correct me in my answers; just stop at that point.

Mr. BELMONT. I have the highest respect for you, Mr. Blaine, not only because you are older than myself, but on account of the high positions you have held, and I think you will find, if you will answer my questions in the same spirit —

The WITNESS. I hope I shall do nothing to-day to forfeit that respect, and I intend to go right along and answer all your questions; any questions under the canopy of heaven that you can conceive of, I will try to answer as you wish.

Mr. BELMONT. Certainly.

The WITNESS. Now, about "unofficially" and the leaving out of the word "unofficially" in a very hurried dispatch I desire to say this; because the newspapers have been teeming with representations that we were going to make war in behalf of some claim; that I endeavored to overtake Mr. Trescot, as nearly as I could, before he got into any diplomatic negotiations of any considerable consequence at Chili, by correcting the impression that this government was intending to do anything that would involve a condition of war on account of any claims. I attempted then to draw the distinction between the Cochet claim, which had been entirely thrown out by the State Department and concerning which it would have nothing whatever to do, and

the Landreau claim, which had been repeatedly, over and over and over again, in various forms, approved by this government; among other things, that it had the sanction of Secretary Fish in 1874, made upon the report of the law officer of the department, and I said he instructed him to use his good offices. Why, nine Secretaries out of ten, in writing that, would quote it exactly in the same way; and besides, there was the very careful report drawn up, I presume, as such reports are usually drawn, by an officer of the department; reports of that kind signed by Mr. Evarts were usually drawn up by an officer who was more careful even than the Secretary himself. In that report, signed by Mr. Evarts, he used this language: "A copy of the material part of that opinion is herewith transmitted as coming within the purview of the resolution. A copy of the instruction addressed by the department, on the 25th of July, 1881, to the United States minister at Lima, Mr. Francis Thomas, in which he was, pursuant to the opinion of the examiner of claims, instructed to use his good offices in the adjustment of the claim, is also transmitted."

Why, it is the most intense effort of hypercriticism to dwell upon the understanding of that word "unofficially." You might as well say that here in one of my letters I used the phrase, "I am, very respectfully, your obedient servant," and in another of my letters I used the phrase, "I am your obedient servant;" and then some fellow comes along and asks me why did you leave out the words "very respectfully?" It is of no more consequence than that.

Mr. BELMONT. Then there is no meaning in the word?

The WITNESS. Not the slightest. The foreign minister is there, and in his communications they are always official. The only meaning I could give you from which to draw any latitude at all is that it was an emphasis in order to let it be known that that claim was to be presented entirely in the nature of good offices and personally, and not as one upon which this government would insist with a formal demand. When the United States has insisted with a formal demand for the settlement of claims, it has insisted with a cannon shot, as it did in the case of Mexico, and as General Jackson threatened to do in the case of France; that is the difference. That is the difference between a demand and good offices, and it is perfectly well understood.

Mr. BELMONT. The point is in the difference between a demand and good offices "officially," and a demand and good offices "unofficially." However, the explanation has been thoroughly given.

The WITNESS. I will give it as fully as you desire.

Q. Did not Mr. Fish inform Mr. Thomas on November 5, 1875, that the State Department regarded the claim of Landreau as resting upon merely an implied contract, and that the department did not regard such questions as of an international character, and did not Mr. Fish also inform Mr. Thomas that his course must be limited to "unofficial" good offices?

Mr. WILSON. Mr. Chairman, just here I desire to make one remark. It is my desire that each gentleman here should have the fullest opportunity and the widest possible legitimate range in elucidating the facts in this matter. But if we are to extend the scope of the inquiry as wide as we did in the examination of the last witness, it will easily be seen that this examination will keep us here until midsummer. I suppose we have some regard to the rules laid down for the examination of witnesses, and if so I want to call attention to them. I do not desire to stop Mr. Belmont, but I do desire to say that I object to questions of that character, coming from whom they may.

The WITNESS. I hope you will not object on my account.

Mr. WILSON. It is not so much on account of the witness that I do it, as on account of the committee. If we are to enter into an examination the witness upon matters of record as to what some former Secretary may have communicated to some foreign minister, we might as well take up the whole of the published diplomatic correspondence and inquire into what each former official did on each former occasion. Now, as to what Mr. Fish, acting as Secretary of State, may have said or written to some consul or some minister plenipotentiary, is a matter of record which we can get, and the manner of proving it by the witness does not make it the best character of evidence. We ought to be governed in this matter by the rules of evidence, so that what we may develop will be the best evidence that the nature of the case will admit of. If you want to prove record evidence, prove it by the record. If you want to prove some fact within the knowledge of the witness, prove it by him. I say this only in the desire to economize time; for if this examination is to go on as we are going, midsummer will catch us here without the examination being completed.

The WITNESS. I hope the honorable gentleman from West Virginia did not object with the faintest expectation of protecting me as a witness from any annoyance.

Mr. WILSON. I have already stated that it was not so much to protect the witness as it was to protect the committee.

The WITNESS. I have plenty of time. I shall subordinate all other engagements to this.

Mr. WILSON. But we have not the necessary time to go into these matters.

The CHAIRMAN. I desire to say that I was otherwise engaged at the moment and did not hear the question of Mr. Belmont. I think it is the design of the committee to give wide liberty to the cross-examination, and that matters of that kind may be referred to to lay the basis of a question on the cross-examination. But of course we all understand that it is desirable to restrict these collateral matters as much as possible.

Mr. BELMONT. Of course this question about the Landreau claim must be very familiar to Mr. Wilson, because he made this very report upon it, of which I was speaking.

Mr. WILSON. I did.

Mr. BELMONT. It will be necessary to repeat my question, and I am very sorry that it is necessary to take up so much time. I would ask the witness whether upon that occasion—that is to say, in the writing of the dispatch of November 5, 1874—when Mr. Fish stated that the Landreau claim rested merely upon an implied contract, and that the department does not regard such questions as of an international character, whether Mr. Fish did not then also inform Mr. Thomas that his course must be limited to unofficial good offices?

The WITNESS. Well, that is merely a repeating of it.

Mr. BELMONT. Exactly; that is the fact, because you say this was a subsequent dispatch to the one referred to in your dispatch of September 16.

The WITNESS. Certainly. It was still repeating his dispatch. As Mr. Belmont leaves his question, my answer is that he wanted Mr. Thomas to understand precisely what he meant.

Q. Did not your instructions both to General Hurlbut and Mr. Trescot carry the intervention of the United States in behalf of the claim of Landreau beyond the point to which the Department of State, under Mr. Fish, deemed it prudent to go?—A. By no means; and I shall be very much obliged to the honorable examiner if he will indicate to me where and on what phrase in my dispatch he bases that question. I answer no, absolutely, to your question. And now, in turn, I beg to inquire on what term or phrase in my dispatch you base the question; where I carried it to the point of any intervention beyond Mr. Fish's desire.

Mr. BELMONT. I will proceed in my own order, because I am endeavoring to show whether or not I was correct in my conclusions in regard to—

The WITNESS. Yes; and I want you to show it now.

Mr. BELMONT. Yes; I expect to show it—whether or not I was correct in regard to my conclusion in my question about which Mr. Blaine found some fault at the last examination—that is my only purpose. Did you not instruct both General Hurlbut and Mr. Trescot to bring to bear upon Peru the power of the Government of the United States to constrain Peru to recognize and adjust that claim?

The WITNESS. I am bound to say, with all due respect, that your questions are entirely absurd. Why do you not ask me if I instructed them to take cannon and an army down there? I did that just as much as I did the thing about which you are asking.

Q. I am asking only for information.—A. I did not. Well, if you are asking for information, after the dispatch is before you—

Q. I am asking for a construction of the dispatches.

The WITNESS. Please read that question again.

Q. Did you not instruct both General Hurlbut and Mr. Trescot to bring to bear upon Peru the power of the Government of the United States to constrain Peru to recognize and adjust that claim?—A. Why, of course I did not.

Q. You did not?—A. No. But I again want you, and shall, on the doctrine of fair play, ask that you shall show wherein you base so absurd a question on anything that I have said.

Q. Certainly. When you instructed General Hurlbut, on August 4, 1881, to employ his good offices to procure the prompt and just consideration of the claim of Landreau, was not that something more than an instruction to use his good offices unofficially?—A. No, sir.

Q. It was not?—A. No; not in Mr. Evarts's opinion and in mine.

Q. Did not the entire Landreau claim, so far as it has any basis at all, originate in the demand of a French subject or citizen against Peru?—A. Your neighbor who sits next to you on the committee (Mr. Wilson) can give you more information about the Landreau claim than I, because this committee, in the last Congress, most elaborately defended the right of the United States to prosecute that claim. But if you are asking for the details of the claim, I will again say I found it *res adjudicata* in every respect by two departments of the government.

Q. Did it originate in a demand by a French subject or citizen against Peru?—A. Partly by a French subject and partly by an American citizen, both.

Q. The contract was made with a French subject?—A. Well, the American citizen was his partner.

Q. After the contract was made a long time—many years after—how, so far as the intervention of the Government of the United States in behalf of such a claim is concerned, did the Landreau claim differ from the Cochet claim, which you informed General Hurlbut, on November 17, originated in a demand by a native Peruvian as against his own government?

The WITNESS. What do you mean by the word “intervention”?

Mr. BELMONT. I mean what was intended in your dispatches.

The WITNESS. What did I say in my dispatches?

Mr. BELMONT. O, they are all here.

The WITNESS. You have just heard; their good offices, was it not?

Mr. BELMONT. I am asking you.

The WITNESS. You are asking me about intervention, and I say I never made any intervention at all about it.

Mr. BELMONT. I am asking you really in order to throw some light on the dispatch of November 17, in which you say that the claim of Cochet originated in the demand of a native Peruvian against his own government, and I want to know how that differs from Landreau's claim, which originated in a French citizen against the Peruvian Government.

The WITNESS. I confess this is a very extraordinary examination.

Mr. BELMONT. Then—

The WITNESS. One moment. I want to make a remark just at this place which seems to be a comprehensive answer to Mr. Belmont. I am here as an ex-Secretary of State, being examined for making representations in accordance with the recommendation of this committee of the last House and the unanimous vote of the last House. In other words, the House of Representatives, through its Foreign Affairs Committee, asked the State Department to do a certain thing, and at the next session of Congress they proceed to investigate him for doing it.

Mr. BELMONT. I think it is very well we have; I do not think there is anything in the claim.

The WITNESS. That may be.

Mr. BELMONT. That is just what I am trying to arrive at.

The WITNESS. Did the State Department ever say there was anything in it?

Mr. BELMONT. Then, if not, I do not see why they should have pressed it so much.

The WITNESS. Did they ever say there was anything in it?

Mr. BELMONT. Why did they press it?

The WITNESS. They pressed it as Mr. Fish did, for adjudication, and never asked anything about it.

Mr. BELMONT. And knowing at the time that there were no courts in Peru, how could they adjudicate it? But we will come to that. I want to know, if you please, how did the Landreau claim differ from the Cochet claim which you informed General Hurlbut on November 17, originated in the demand of a native Peruvian as against his own government, while the Landreau claim originated in a French citizen against the Peruvian Government; what is the difference?

The WITNESS. It originated in the right of the partner of a man who was an American citizen.

Mr. BLOUNT. I am not talking of the partner.

The WITNESS. I was not intervening for the Frenchman, but for the American; that has some bearing on the subject, as you may possibly observe. We were asking Peru to ascertain what his rights were. I said we will not undertake to construe his rights, but we think this man is entitled to a trial; give him a trial.

Mr. BELMONT. You were saying that at a time when there were no courts?

The WITNESS. Oh, no! stop right there. We asked it at a time when the courts had refused to permit him to be heard. We said, having cut this man out from the right of diplomatic intervention, and having referred him to your courts, and the courts saying that they have no jurisdiction, now if he has any rights there (and we do not assume to say whether he has or not), let him be heard.

He has a contract with the Peruvian Government, and we ask the Peruvian Government to institute some tribunal before which this man can be heard. If the claim is decided against him that is the end of it; but if it is decided in his favor, then I shall expect that the English bondholders and the French claimants, and all those men, shall not gobble up and carry to Europe the very property to which this claim attaches. I can show you how the United States comes to be interested in it. It has discredited a claim which the House of Representatives had indorsed, and of course out in Peru and Chili the very action which had been taken three times by the State Department and once by the House of Representatives has, by certain public opinion, been discredited, and under that the English bondholders have gone off with half a million tons of guano and have got \$30,000,000 for it; and they have got in England to-day the very property to which this claim attached if it had been adjudicated.

Now, we did not go to Peru and say you owe this man this money and we are going to insist on its payment. We said here is a man who appears to have an equitable

claim; we want you in some mode to accord him a trial, and let him be heard in regard to the matter. If you decide against him, that is the end of it; if you decide in his favor, let him, although he is an humble citizen of a government that seems afraid to go out over night, let him be taken into this account, and let him have some of the crumbs at least that fall from the rich Englishman's table in the settlement of the Chilian-Peruvian matter.

Mr. BELMONT. You have spoken two or three times about the action of this committee and the action of the House last year.

The WITNESS. Yes.

Mr. BELMONT. Of course I need not tell you that when the claim came into the Senate it was not acted upon, but remained in committee.

The WITNESS. No; not in committee.

Mr. BELMONT. It never was acted upon in the Senate committee.

The WITNESS. Yes, it was acted upon in the committee.

Mr. BELMONT. Then it was rejected by them?

The WITNESS. No; it was never rejected.

Mr. BELMONT. But that resolution was —

The WITNESS. When a gentleman makes three erroneous assertions upon a point, he ought to make a fourth one that will touch it.

Mr. BELMONT. That is what I am going to say.

The WITNESS. What is your fourth one?

Mr. BELMONT. I was going to say that the resolution was a concurrent resolution of the two houses. It passed the House, but it did not pass the Senate. That is all.

The WITNESS. Senator Eaton, who thoroughly believes in the justice and strength of the Landrean claim, was a member of the Committee on Foreign Relations of the Senate, and he was a very careful legislator indeed.

Mr. BELMONT. And is of counsel?

The WITNESS. O, no! Did you mean to say he was counsel then?

Mr. BELMONT. No; not then, above all times.

The WITNESS. If you did I would hand you over to him. He is a brother Democrat of yours, and an honorable man. Senator Eaton said, this is an executive matter purely. It is not for Congress to instruct the executive what he shall do, and I think he was right; entirely right. Nevertheless, the opinion of Congress would naturally be a matter of great weight with the executive department. It is not binding as an instruction. I do not mean to say that; that the State Department by reason of the House of Representatives speaking, was bound to do, or refrain from doing a certain thing; that is not so; but at the same time the Committee on Foreign Affairs of the House of Representatives speaking unanimously after an exhaustive investigation upon the subject, and the House of Representatives voting unanimously upon it, certainly it has great moral weight with the State Department when such an expression is made. That was all I meant.

Mr. BELMONT. I suppose there were very few men in the House who noticed the claim when it went through, although it was a unanimous vote; it often happens so. And as to the opinion of Mr. Eaton, it seems to have been the opinion of one Senator, and the fact remains that this concurrent resolution passed in the House and was not passed in the Senate; that is all there is about it.

The WITNESS. I stated all that on Monday.

Mr. BELMONT. But it is quite in accordance with the line which I am now pursuing. In the dispatch to General Kilpatrick of June 15, I find it stated (I mean the dispatch from the department), speaking of Peru: "Its soil is occupied, the collection of its revenues transferred to the conquerors, and its executive, legislative, and judicial functions in abeyance." That is the reason I said there were no courts in Peru, and, of course, this coming from the department it must have been within the knowledge of the department that there were no courts.

The WITNESS. Well, the courts would have done him no good if there had been any. They had passed upon it so far as to declare that they had no jurisdiction of the claim.

Mr. BELMONT. The courts would have had to be set up for that particular purpose?

The WITNESS. A tribunal might have been set up for that particular purpose. Does the gentleman mean that that is an unusual thing? Does the gentleman mean to imply that that is internationally an unusual thing?

Mr. BELMONT. I say if they asked that this claim should be adjudicated, going no further than that, it might have been asked that a court should be set up; but it was only asked that the claim should be adjudicated.

The WITNESS. Was that all?

Mr. BELMONT. Or else arbitration.

The WITNESS. Or else?

Mr. BELMONT. Or else an extension of the jurisdiction of the court.

The WITNESS. So that you see the importance, when the Secretary of State has said three things, of mentioning them all.

Mr. BELMONT. But you could not extend the jurisdiction of the courts if the courts did not exist. In respect to the Cochet claim——

The WITNESS. Does that fact, that the courts are in abeyance, mean that they did not exist; do you understand that to be the meaning of the language "in abeyance"?

Mr. BELMONT. I understand that the meaning of the language is they were in abeyance.

The WITNESS. That they did not exist? Do you mean to say that the courts being in abeyance did not exist; is that your understanding of the language?

Mr. BELMONT. The country, as you say, was in a state of dissolution.

The WITNESS. But I said the courts were in abeyance. You say, now, that they did not exist. Do you mean to say that I said that?

Mr. BELMONT. I mean to say this, that I am asking you questions.

The WITNESS. But I want to conform to the facts. You say that they did not exist. If you think that is the meaning, I will present you with an unabridged Worcester or Webster, and see if you can find that "in abeyance" means they did not exist. I hope——

Mr. BELMONT. I hope you will not relieve me of my willingness and wish to observe every proper consideration of respect. You were Secretary of State——

The WITNESS. But the first consideration of all is to state accurately what he said. Now he never said in the remotest way, nor implied, that the courts of Peru did not exist.

Mr. BELMONT. I am reading from your dispatch, and shall be satisfied with that statement that "its executive, legislative, and judicial functions are in abeyance."

The WITNESS. Well that is a very distinct, well-understood phrase.

Mr. BELMONT. Now in respect to the Cochet claim, you have said, on the 17th of November, 1881, that the Peruvian Government "did not and could not purchase the good offices of this government." How, then, could J. C. Landreau purchase from his French brother the good offices of this government?

The WITNESS. He did not.

Mr. BELMONT. He did not? I thought not. Did the Peruvian Government ever make any contract directly with J. C. Landreau, or was that a contract which was made with his French brother?

The WITNESS. He was the partner of his brother.

Mr. BELMONT. I was asking whether the Peruvian Government ever made a contract directly with J. C. Landreau, or was that contract made with his French brother?—A. It was made in the name of Théophile Landreau, and he was a partner of his brother.

Q. Excuse me; was the contract made with the Frenchman or with the American?—A. It was made with the Frenchman, with an American for his partner.

Q. It was made with the Frenchman?—A. With an American for his partner.

Q. Was the American his partner at the time?—A. At the time.

Q. Is that your understanding of it?—A. That is my understanding of it.

Q. And is that the answer which you wish to remain?—A. Yes, sir.

Q. All right. In that contract did not one or both of the Landreans distinctly stipulate that no question of dispute arising out of the contract should be submitted to the judicial tribunals of Peru, and that in no case should the diplomatic intervention of any foreign government be asked?—A. You learned that from my dispatch; I so stated in my dispatch.

Q. Well, upon what ground did the United States intervene diplomatically in favor of J. C. Landreau?—A. Because, after cutting him out of diplomatic intervention, and saying that he should take all his remedies in the judicial courts of Peru, the courts decided that they had no jurisdiction, and therefore I cannot better answer you, Mr. Belmont, than to quote from the dispatch, which says:

"You will have observed that in the contract made by the Peruvian Government with Landreau and his brother it is expressly stipulated that any questions arising under its provisions should be submitted to the judicial tribunal of Peru, and that in no case shall diplomatic intervention be asked. You will also notice that the supreme court of Peru, sustaining a decision of the court below, has ruled that it had no jurisdiction of this contract, thus leaving Landreau in a position in which he can neither appeal to his own government nor obtain a judgment from the tribunals to which, by the contract, he was authorized to apply."

After the battle of Chancellorsville, Mr. Lincoln said that General Hooker had got his army on both sides of the Rappahannock, like an ox caught in jumping over a fence pursued by the hounds, in which he could neither gore in one direction nor kick in the other. That is exactly where they had got Landreau; he had neither diplomatic representation at home or the right of decent trial abroad. In that event I went on to say:

"While this government will not, as at present informed, undertake to construe the contract or to decide upon the extent of the compensation due Landreau, you are instructed to call the attention of the Peruvian Government to this injustice, and say

that the Government of the United States will expect some adequate and proper means to be provided by which Landreau can obtain a judicial decision upon his rights."

That was all I was venturesome enough to ask of a foreign government; that an American citizen might have a hearing; that is all.

Q. While the courts were in abeyance?—A. Oh, no; I did not want the courts to be called out of abeyance for this case, because they had ruled about it. As far as this case was concerned we wanted them left in abeyance.

Q. You say that by inference?—A. I will inform you. If you will read my dispatch you see that I say:

"If the constitution of the Peruvian courts or the interpretation of the law by Peruvian judges deprives Landreau of the justice which the contract itself guaranteed him, then, in the opinion of this government, Peru is bound in duty and in honor to do one of three things, viz: Supply an impartial tribunal, extend the jurisdiction of the present courts, or submit the case of Landreau to arbitration. I desire also to call your attention to the fact that in the anticipated treaty which is to adjust the relations of Chili and Peru, the latter may possibly be compelled to submit to the loss of territory. If the territory to be surrendered should include the guano deposits which were discovered by Landreau, and for the discovery of which Peru contracted to pay him a royalty upon the tonnage removed, then the Peruvian Government should in the treaty stipulate with Chili for the preservation and payment to Landreau of the amount due under his contract. If transfer be made to Chili it should be understood that this claim of an American citizen, if fairly adjudicated in his favor, shall be treated as a proper lien on the property to which it attaches, and that Chili accepts the cession with that condition annexed."

Well, it was not done; there was nothing done under it, and that property has gone in the way of all flesh. The Chilean Government has put up by advertisement 1,000,000 tons of guano, which I suppose is worth \$60,000,000 in Liverpool, and they pledge themselves in the advertisement to pay one-half of it into the Bank of England for the benefit of the English bondholders who put up the job of this war on Peru. It was a put-up job; that is all there was to it; it was loot and booty. It had not as much excuse in this as Hastings and Clive had in what they did in India. The war on Peru has been made in the same interest that Clive and Hastings had in India, and England sweeps it all in.

Q. The whole war was about this territory?—A. The whole war was about the territory that had the value in it.

Q. About the guano and the nitrates; nothing else?—A. Yes; nothing else. It was to get possession of it. It was the old story of Naboth's vineyard which looked so inviting over the wall. They wanted this territory and were determined to get it. I observed by this morning's papers that the English war fleet of seven large iron-clad vessels have concluded to slip down the coast from Callao to Valparaiso, and they have had a strong force there all the time—the English have. The iron-clads that destroyed the Peruvian navy were furnished by England, and the Peruvian agent came to this country to see whether they could find a good ship to go out there in anticipation of this war, when they knew it was coming. They said they didn't dare to apply in England to get it, and we were not able to furnish it. I do not speak of the government; I mean the manufacturers of this country. They did not dare to apply to England for it. It is a perfect mistake to speak of this as a Chilean war on Peru. It is an English war on Peru, with Chili as the instrument, and I take the responsibility of that assertion. Chili would never have gone into this war one inch but for her backing by English capital, and there was never anything played out so boldly in the world as when they came to divide the loot and the spoils. They said we will take half, and we will divide this inheritance among ourselves, and as to these American citizens about whom they talk, they have been discredited at home, and what right has an American citizen to be regarded down here. We are going to settle this ourselves. And we earned, in the end, the high rank and title of being absolutely the subject of funny cartoons, in which the American Navy is represented as being blown out of the water by the Chilean fleet, and it is believed all over Chili to-day that we backed down for fear of being thrashed. The Chilean papers all say we escaped a great thrashing by getting out of it just in the right time. And that is the terrible war that I was going to urge the country into, in which the United States was to be ruined by Chili—eighteen hundred thousand people, eight thousand miles away, were going to whip the United States.

Mr. BELMONT. I thought England had something to do with that.

The WITNESS. How?

Mr. BELMONT. So that it would not have been a war with Chili, if a war at all.

The WITNESS. Do you mean to say that you think England's intervention would have gone so far as to have met the United States on that; do you?

Mr. BELMONT. I have no information on that subject at all.

The WITNESS. You seemed to appropriate some just now of great importance.

Mr. BELMONT. You said this was a put-up job to get possession of the loot.

The WITNESS. Yes; but I do not think the English would have carried it so far as they did, if the United States had not backed down.

Mr. BELMONT. They were after this guano and these nitrates.

The WITNESS. Yes.

Mr. BELMONT. And it was just a question as to who was to get it?

The WITNESS. That was the whole of it, and the United States could have prevented it without firing a gun; and history will hold the United States responsible for it; that is my belief.

Mr. BELMONT. Certainly the position of the United States is very unfortunate in South America, and that is really——

The WITNESS. I do not quite agree with you in that, because she has got no position at all.

Mr. BELMONT. Therefore it is unfortunate.

The WITNESS. It is unfortunate that she has no position there.

Mr. BELMONT. And we are endeavoring to arrive at the reason for that, and to place the responsibility for it.

The WITNESS. And you think it is in the Landreau claim?

Mr. BELMONT. Oh, that is only an incidental matter.

The WITNESS. Yes; I should think so. The fact of it is, the whole of this business about the Landreau claim and the Cochet claim had no more to do with the administration's policy about South America than a barnacle on the bottom of the vessel that carried General Hurlbut into Lima had; not a bit; nothing whatever. It never interrupted the course of it for an hour, and never figured in it; never. In the instructions which Mr. Trescot received from President Arthur there is no allusion to them at all; not the slightest. They did not figure; they were not a part of the *res gestæ* at all; they were mere incidents.

Mr. BELMONT. Now, I suppose we may go on with the questions. Was the contract of the Peruvian Government with the American citizen or with the French citizen?—A. I have answered that, I believe, about half a dozen times.

Q. I did not understand exactly.—A. It was with a French citizen who had an American partner.

Q. And that contract included one or both of the Landreaus distinctly? I ask that with reference to their shape in diplomatic intervention.—A. Well, I have read my dispatch on that.

Q. Now suppose the Government of the United States should make a contract with a British subject to perform any work in the United States, and the express condition of that contract was that any dispute arising thereunder should be submitted to the courts of the United States, and that under no circumstances should there be the diplomatic intervention of any foreign government; would you say that the British Government, under such a contract, could be permitted to intervene and compel a decision in the courts of the United States, and press its diplomatic intervention in that direction?—A. In the first place, if the United States made a contract with the government giving a British subject the right to appear before our courts, our courts would hear him. Such a case would never arise; the case would never go that far if a British subject should make a contract with the United States Government. Of course there never would be any diplomatic representations between nations of this magnitude. We do not allow certain nations of the earth to try an American citizen for anything. We do not allow an American citizen to be tried by the Governments of Turkey, China, or Japan. But between such governments as the United States, Great Britain, and France, of course the courts of each country adjudicate the rights of the subjects of each other. But I undertake to say to the examiner, if the United States should guarantee, in making a contract with a British subject, that in anything wrong under that contract he should have recourse to the courts of the United States, that the courts of the United States would hear him, or Great Britain would be apt to ask a reason why they did not. I think if an American citizen had a contract with the British Government, and Great Britain should say that, in case of any dispute arising, this American citizen should have a status before the courts in Westminster Hall, that when the case went over to Westminster Hall and the court of Queen's Bench should say they did not have any jurisdiction, the United States would ask Great Britain to supply some tribunal. They would say here is an American citizen to whom you have guaranteed the right to apply to the courts, and the courts say they have no jurisdiction; you will please provide some tribunal before which this citizen's rights can be tried (that is just what we sought for in Peru) and Great Britain would do it, and the United States would do it.

Mr. KASSON. I do not wish to check the witness, but I think he will perceive that the committee will be able to interpret for themselves the effect of such international relations as he has recited.

The WITNESS. In other words, and to use the language of Chief Justice Marshall,

it may be presumed, I suppose, that the court knows something of the elementary principles of the law. [Laughter.]

Mr. BELMONT. Did you not instruct General Hurlbut in your dispatch of August 4, 1881, in respect to the claim of Landreau, to "take special care to notify both the Chilian and Peruvian authorities of the character and status of the claim (of J. C. Landreau) in order that no definitive treaty of peace shall be made in disregard of the rights which Landreau may be found to possess"?

The WITNESS. I played a perfectly open hand. I wanted Chili to know exactly what we were doing. I did not have an instruction about that that I did not want Chili to get. I wanted Chili to know that it was an American right, and that we, through our good offices wanted to secure this man his right of trial, and, if adjudicated in his favor, his right of possession; and we wanted to let Chili know that if the property was adjudicated subject to his mortgage, which has been erroneously stated at \$100,000,000—I think the claim never exceeded \$7,300,000, it was not a very enormous claim, as things go—

Q. It certainly could not have helped Peru to pay it at that time, though?—A. Oh, no; but it would have helped Landreau if he had got it, very much, and it would not have hurt her any more than to have it go to English claimants if a portion of the \$60,000,000 had gone to Landreau instead of to the English bondholders; and I think that Peru would rather have Landreau have it than these other fellows.

Q. It was a question whether he could get \$60,000,000?—A. It was a question whether he should get what he was entitled to. He was after his own property, not anybody else's.

Q. When you speak of Landreau at present, and in the dispatches, of course you mean the American Landreau?—A. I mean the American Landreau, who is American enough to be United States consul at Santiago de Cuba to-day.

Q. But there are consuls who do not speak the English language?—A. I think not; and as you are on the Foreign Affairs Committee, let me instruct you as to the difference between a consul and a consular agent. An agent is a subordinate officer placed by the consul at an unimportant point. But I think the United States consul whose name has to be sent to the Senate of the United States for confirmation has never been any other than a citizen of the United States. But a consular agent may, just like a consular clerk, be taken from any country. That is a very important point, Mr. Belmont, and you ought to keep it in mind.

Mr. BELMONT. I see it is. Will you explain to me, then, how it is that the husband of Gerster—what is his name?

The WITNESS. Dr. Gardini.

Mr. BELMONT. How did he happen to be made consul?

The WITNESS. He is a consular agent; he is not a consul at all. Now, if you should happen to be on the Senate committee instead of the House, it would be very awkward for you not to know that fact, and by the time you reach there I think you will thank me for giving it to you.

Mr. BELMONT. I think you have gone a little further than was necessary in answering my question.

The WITNESS. Well, I would rather be affluent in information than niggardly about it at any time.

The CHAIRMAN. The chair will exercise its good offices in the interests of peace unofficially, not to the extent of a demand, for the chair does not want a fight. [Laughter.]

Mr. BELMONT. I am very much obliged to the chair, but the spirit of the witness can only reflect upon himself.

The WITNESS. Why, I am in the most perfect good humor.

Mr. BELMONT. I am sorry that the question seemed to excite him.

The WITNESS. What question?

Mr. BELMONT. Various questions which have been asked.

The WITNESS. O, not at all.

Mr. BELMONT. I am very glad to have pleased the witness; that is all I want to say about it. Was not the effect of these instructions—

The WITNESS. I only wanted you to know that J. C. Landreau was in the exercise not only of a consulship, but of a very important consulship. I think possibly it is a consulate as largely paid as any in the Spanish Antilles, excepting Havana. He is no doubt an American citizen. If he was a mere consular agent, that would show nothing. I suppose the majority of the consular agents throughout the world are not American citizens. I imagine, however, that there is no American consul anywhere except he be an American citizen.

The CHAIRMAN. I hope the examiner will proceed as rapidly as possible.

Mr. BELMONT. I think if the witness will answer the questions without going to the four corners of the earth we will get along faster. Was not the effect of the instructions to require General Hurlbut to insist that Chili should stipulate, in any treaty of peace, that if it should be decided by the Peruvian courts that J. C. Lan-

dreau had a lien on any of the territory ceded to Chili, that Chili should thereupon recognize such lien?

The WITNESS. Do you mean General Hurlbut or Mr. Trescot?

Mr. BELMONT. I mean General Hurlbut—

The WITNESS. State your question again.

Mr. BELMONT. Or either of them, because Mr. Trescot at that time was proceeding to Chili and Peru. Was not the effect of those instructions that General Hurlbut should take special care to inform both the Chilian and Peruvian authorities of the character and status of the claim of J. C. Landreau, in order that no definitive treaty of peace should be made in disregard of the rights which Landreau might be found to possess?

The WITNESS. Yes.

Q. Was not the effect of those instructions to require General Hurlbut to insist that Chili should stipulate, in a treaty of peace, that if it should be decided by the Peruvian Government that J. C. Landreau had a lien on any territory ceded to Chili, that Chili should thereupon recognize that lien?—A. Yes; that he should make that request.

Q. If Chili had refused to make such stipulation, would not General Hurlbut have been bound to resist, to the extent of his influence, the signing of a treaty of peace without the stipulation?

The WITNESS. What had he to do with the signing?

Mr. BELMONT. I have not finished. Now, Mr. Blaine, without any more nonsense—

The WITNESS. Well, I am very glad to hear that, Mr. Belmont; I am very glad to hear it, indeed.

Mr. BELMONT. Now, will you answer the question?

The WITNESS. If you will state it again I will.

Q. I ask if Chili had refused to make such stipulation would not General Hurlbut have been bound to resist, to the extent of his influence, the signing of a treaty of peace without the stipulation?—A. Yes, sir.

Q. He would?—A. Yes, sir. I admit that he ought to have used all his influence to prevent a treaty of peace that should shut out the rights of an American citizen.

Q. You say that he would?—A. Yes, sir. He would have been censurable if he had not.

Q. Well, you have given the answer I was seeking. Was not that saying to General Hurlbut, in substance, that no treaty of peace between Chili and Peru shall be made unless there is a recognition of Landreau's claim as a prior lien on any territory which Peru might be required to cede to Chili?—A. I do not see it.

Q. You do not? Is that the only answer you can give to that question?—A. O no; I will give you a full answer. You ask me if it was not his duty to use all his power to secure that; and you ask me whether that would not be tantamount to—what is your next question?

Q. Whether that was not saying, in substance, that no treaty of peace between Chili and Peru should be made unless there was a recognition of Landreau's claim as a prior lien upon any territory which Peru might be required to cede to Chili?—A. Why he should use his power to prevent it?

Q. I only ask you the question.—A. He should use his power to prevent it, and to secure the inclusion of the rights of the American citizen.

Q. That is not an answer.—A. That is the one I want to give; it is not the one you want, perhaps.

Q. But you do not answer the question.—A. Yes; I answer it as I want it answered, not as you want it answered. There is a great distinction between them.

Q. I suppose you intend to have your own way in answering the question.—A. Most undoubtedly I do. It is your right to question, and my right to answer. You know the wise man says the hearer is one and the speaker is another.

Q. I will repeat the question and see if I can get a more definite answer. Was not that saying to General Hurlbut, in substance, that no treaty of peace between Chili and Peru should be made unless there was a recognition of Landreau's claim as a prior lien upon any territory which Peru might be required to cede to Chili?—A. O, no; there was nothing of the kind in it by any stretch of the imagination.

Q. Did you not, in your note to General Kilpatrick of June 15, 1881, inform him that "The result of the conflict has been not only the defeat of the allied armies, but the dissolution of all responsible government in Peru. Its soil is occupied, the collection of its revenues transferred to the conquerors, and its executive, legislative, and judicial functions in abeyance. It can neither enforce order within, nor assure peace without." Did not a similar condition of things exist in Peru on August 4, 1881, and on December 16, 1881?—A. On August 4, 1881, the Calderon government was getting under way very fairly, and had it not been thrown over by the Chilian Government, which desired its demolition just as it was gaining strength, there would have been, and was then at that moment, a very different condition of affairs in Peru from what there was two months before, when I wrote that instruction. The Calderon government was bringing order out of chaos very rapidly. The condi-

tion of affairs tended to concentrate the power of Peru under the lead of Calderon, and there would have been an orderly government. And it was in view of that instruction and with that knowledge that I wrote that. On the 15th of June, when the Calderon government was more of an experiment than two months later, I would not probably have written the same thing. If the Calderon government had been allowed to stand there would have been order, and there would have been a treaty of peace made. I am not sure that a treaty of peace would not have contained some cession of territory. I never, in any communication to Peru or Chili, averred that a cession of territory might not be made. I contended that Peru should be allowed a constitutional form of government in order that a treaty might be made, and that territory should not be taken by mere force of arms. When I wrote that instruction affairs were growing very rapidly into an orderly condition.

Q. Then you considered that there was reasonable expectation on August 4, 1881, that Peru could provide adequate and proper means by which Landreau could obtain a judicial decision upon his rights in Peru before a treaty of peace could be made with Peru?—A. Why not? There was a full congress in session and a president in the full exercise of power, and there is no reason in the world why a tribunal might not have been established in two days.

Q. You mean Calderon was in power?—A. Yes; Calderon.

Q. But he was taken prisoner afterwards?—A. Yes; because he was going to do these very things. He was taken prisoner to prevent these very things from being done.

Q. Was the negotiation with the Chilean Government?—A. I never heard of any negotiation with them.

Q. I thought you said these things were going to be done.—A. What things?

Q. The granting of the Landreau claim.—A. What had that to do with the Peruvian Company?

Q. I ask you that.—A. O, no; you stated something, I thought, about the Peruvian Company. The Peruvian Company never owned the Landreau claim.

Q. Who did own it?—A. John C. Landreau, the United States consul at Santiago de Cuba.

Q. Who was associated with him?—A. I do not know.

Q. You do not?—A. No, sir.

Q. That is really the most important part of the inquiry, to know who was associated with Landreau?—A. The State Department never so regarded it. If I should have a piece of commercial paper signed by August Belmont & Co., I should not want to have a list of the partners in the firm at all.

Q. I thought you said it made a great difference in the claim; that you thought bankers and others in New York were interested in the claim, and you found they were not. Was that the reason that you gave it up?—A. I never gave it up, because I never took it up.

Q. You said there were reputable citizens connected with it, and you mentioned a number of them the other day, and they seem to be the same names?—A. Yes; because they were the names most prominent.

Q. And that did have an influence in determining the credibility of Mr. Shipherd?—A. Yes; but where is the need of applying—

Q. I am only asking to see whether the people behind Landreau—— A. Oh, Landreau was the all-sufficient one himself. What was the use of going behind that?

Q. Then you do not know who is behind Landreau?—A. No, sir; and have no reason to inquire.

Q. You have not the slightest idea?—A. No, I have not.

The CHAIRMAN. It is now about 12 o'clock, and the session should close. Can you indicate, Mr. Belmont, about how long your examination will occupy to-morrow?

Mr. BELMONT. I do not think it will occupy a long time; it will be very short.

The CHAIRMAN. Then we will adjourn the hearing until ten o'clock to-morrow morning, April 27th.

WASHINGTON, D. C., April 27, 1882.

The committee met pursuant to adjournment.

The Hon. JAMES G. BLAINE appeared, and his examination was resumed.

Mr. BELMONT. I see that in reply to a question yesterday about the word "unofficially," you have stated that Mr. Evarts, with the letter of Mr. Fish before him, in making his report to Congress omitted the word "unofficially." I only wanted to call your attention to the fact that he did not omit the word. If you will read the report I hand you, you will see the word there underlined. [Handing a book to the witness.]

The WITNESS. Have you a copy of the larger book containing the published correspondence? If you have, and will turn to the 640th page of the official publication

of the State Department, you will see the published letter of Mr. Evarts on this subject.

Mr. BELMONT. That is the same letter which I wish to call attention to.

The WITNESS. Mr. Evarts says in that letter, "A copy of the material part of that opinion is herewith transmitted as coming within the purview of the resolution." I will read the portion referred to:

"Most of the points of interest in determining the American citizenship of John C. Landreau, and his right to participate in the recompense claimed by his brother, are contained in an opinion, submitted on the 16th of June, 1874, to the then Secretary of State, Mr. Fish, by the examiner of claims of the Department of State, Henry O'Connor, esq. A copy of the material part of that opinion is herewith transmitted as coming within the purview of the resolution. A copy of the instruction addressed by the department, on the 25th of July, 1881, to the United States minister at Lima, Mr. Francis Thomas, in which he was, pursuant to the opinion of the examiner of claims, instructed to use his good offices in the adjustment of the claim, is also transmitted."

Mr. Evarts omitted it there, didn't he? Above, he had it; but he omits it there, doesn't he?

Mr. BELMONT. You were reading from one part——

The WITNESS. Yes, of course.

Mr. BELMONT. And I am reading from another part.

The WITNESS. And Mr. Evarts in one place used it, and in another omits using it, showing, as I said yesterday, the utter inconsequentiality of the word; that in one place he uses it, and in another place he omits to use it.

Mr. BELMONT. What I say to-day is correct; that he used it.

The WITNESS. And what I said yesterday is correct; that he didn't use it.

Mr. BELMONT. Very well, we will call it quits, then.

The WITNESS. This is precisely in accordance with what I said yesterday; that the word is inconsequential, and so much so that in one part Mr. Evarts uses it, and in the other part he does not use it. Now, one word. Mr. Belmont exhausted two hours yesterday of the time of the committee in traveling in a circle all the time. He repeated these questions six or eight or ten times over. Of course he has the right to do so if he chooses, but it all turns on the fact that he made two palpable misquotations from my official dispatches, and it would seem to be his object to establish, in some circuitous manner, that he was in some way justified in doing that. He has not yet touched upon that point. And while I have the largest possible stock of patience, I would rather Mr. Belmont would come directly to the point. There are very many important questions in the South American policy that I would be glad to be heard on, and which I have the presumption to suppose that the members of the committee may desire to examine me upon. But to iterate and reiterate over and over again the same questions touching this Landreau claim, in order to vindicate Mr. Belmont from having made a blunder (I do not accuse him of anything else) in misquoting me in two particulars, is utterly exhausting to my patience. Mr. Belmont made two palpable misquotations, and he has made no explanation, and as a gentleman (as I hold him to be) he ought frankly to say that he did so. That is all I desire—for him to say, as a gentleman, frankly, that he made a mistake in the quotations.

Mr. BELMONT. Mr. Blaine——

The CHAIRMAN. One moment, Mr. Belmont——

Mr. BELMONT. I must reply to Mr. Blaine.

The CHAIRMAN. I desire to say a word or two to Mr. Belmont and Mr. Blaine. The chair is very reluctant to put any restriction upon the course and conduct of the examination. Mr. Belmont, as a member of the committee, insists upon his right to examine in his own way, and I have no doubt that Mr. Blaine will exercise the virtue of patience. I presume that in pursuing that course you will be able to finish the examination much sooner than if the committee undertakes to instruct either the witness or the examiner.

The WITNESS. With this protest, I am willing to submit to it; but it is tedious.

Mr. BELMONT. Of course, the object of Mr. Blaine is plain enough. It is to avoid the direct issues.

The WITNESS. What issues?

Mr. BELMONT. The issues which must be raised here in the examination.

The WITNESS. What are the direct issues? State them.

Mr. BELMONT. I will not answer a single question which you ask from this time on until the end of the examination.

The WITNESS. Well, go on with your examination.

Mr. BELMONT. You have stated what I deem to be entirely inaccurate. You have endeavored to place me just now in a false position. In that you will not succeed. The other day I said that those quotation marks were the mistake of the printer, and that your language bears the construction which I put upon it, and it will stand so. The careful reader of your dispatch will agree with me. The careless reader may be influenced by the stump speech which you made.

The WITNESS. And which you are now trying to copy.

Mr. BELMONT. I will not endeavor to imitate Mr. Blaine in anything which I consider improper; and the commencement of this examination this morning relieves me of all considerations which I mentioned yesterday, and which I intended to observe towards a man who had held the position of Secretary of State. You have now placed yourself on a level with any witness who might appear before this committee and I shall examine you just in that spirit. Of course you have been —

The WITNESS [interrupting]. What do you mean, sir?

Mr. BELMONT. I mean this, that you have been before committees before this time, that you have endeavored to threaten, and that —

Mr. WILSON. I submit that this colloquy has gone far enough.

The WITNESS. Why, Mr. Chairman, this is intolerable; it is intolerable. The insolence of this young man is intolerable.

Mr. BELMONT. You have brought it on yourself.

The WITNESS. Brought it on myself? Why I have no more regard for his insults than I would have for those of a garbage boy on the streets—not a particle more.

Mr. WILSON. This colloquy is highly improper.

Mr. BELMONT. Mr. Blaine has had experience before in committees, and has done the same thing before. He has done it for the last time. He will not do it with me.

The WITNESS. Mr. Chairman, this is too trivial; utterly too trivial. I hope that the committee will protect itself. I have no power to protect it.

Mr. CHAIRMAN. I have only this to say as representing the committee. I can only appeal to both of these eminent gentlemen to refrain, so far as possible, from lecturing each other. I ask the one to put his questions and the other to answer them. The committee will allow the widest latitude, and exercise the greatest patience towards both of them. But these scenes ought not to occur.

The WITNESS. They ought not.

Mr. ORTH. I think the record is going to be stained by such scenes before the committee.

The CHAIRMAN. Mr. Belmont, will you now proceed with your question?

Mr. BELMONT. That is what I intended to do at the beginning. I consider that Mr. Blaine has brought this entirely upon himself.

The WITNESS. That he has brought the wrath of your indignation upon him?

Mr. BELMONT. No; what is called a scene.

The CHAIRMAN. It is the desire of the chair that the testimony shall proceed in regular order.

Mr. ORTH. Simply questions and answers, and then we will get along better.

By Mr. BELMONT:

Q. Did not the resolution of the House of Representatives of February 20, 1880, to which you referred in your direct examination and again day before yesterday, limit its requests to the President to use such steps as in his opinion might be proper and in accordance with international law, to secure to Landreau (I mean the pretended American citizen, the man who has lobbied about here with a fraudulent claim, who pretends to be an American citizen, of whose naturalization there is no record in the courts of New Orleans)—

Mr. DUNNELL. Mr. Chairman, that is not a straight question.

The WITNESS. I have done with protesting.

Mr. DUNNELL. This is putting a stump speech in the body of a question, and I do not believe in it. It is a very easy thing to ask a straight question, but I do not believe in the propriety of putting a stump speech in the middle of a question. I do not believe in it, and I protest against it.

Mr. BELMONT. Stump speeches have been put in the middle of answers.

Mr. DUNNELL. Very well. The committee have decided that direct questions shall be asked and direct answers given. I wish you would start out in that line.

Mr. BELMONT. We should have started so in the beginning.

Mr. DUNNELL. We have started so now, and let us get along.

Mr. BELMONT. I do not intend that there shall be any false conception about this Landreau matter. There never was a case with so little foundation brought into the State Department and that received so much consideration there.

Mr. DUNNELL. Mr. Chairman, is Mr. Belmont asking a question?

The CHAIRMAN. I submit that to the judgment of the interlocutor.

Mr. DUNNELL. I think that the committee has a right to have some judgment of its own.

The CHAIRMAN. The committee will exercise that right by suggestions to the self-respect of the members of the committee, the witness and all. The chair has no power to commit for contempt, and would be very loth to exercise it if he had. I think we can get along without trouble by simply allowing questions to be propounded and by hearing the answers.

Mr. BELMONT. The fact is that there has been so much based on this report of Mr.

O'Connor (who is the law officer of the State Department) that it is important to establish the fact that the report itself is, in the opinion of Mr. O'Connor, at present unfounded in fact. The report says that J. C. Landreau was a minor under eighteen years of age in 1857, but it neglects to give the exact age. It appears that he acquired his partnership interest in 1859. In admitting then that Mr. O'Connor had proved that J. C. Landreau had acquired, even while yet a minor, certain rights against his brother, will Mr. Blaine tell me how Mr. O'Connor could prove that Landreau had acquired any rights against Peru? Will you be kind enough to answer that question now?

The WITNESS. You want me to give my estimate of the measure of Mr. O'Connor's ability to prove a given proposition?

Mr. BELMONT. No, I am asking you a simple question, which you do not answer.

The WITNESS. Please repeat it.

Mr. BELMONT. I see that Mr. O'Connor in his report says that J. C. Landreau was a minor under eighteen years of age in 1857, but he neglects to give his exact age. It appears that he, Landreau (the pretended American citizen of whose naturalization there is no record), had acquired his partnership interest in 1859. The pretended naturalization occurred in 1867. In admitting that Mr. O'Connor had proved that J. C. Landreau had acquired even while yet a minor certain rights against his brother (the brother, Mr. Blaine, that you remember is the original claimant and a French citizen who applied to his own government in vain—the French Government would have nothing to do with him), how can Mr. O'Connor prove that J. C. Landreau had acquired rights against Peru?

The WITNESS. I know, Mr. Chairman, that it would be impossible for Mr. Belmont to repeat that question. It is one of those explicit and direct questions to which I am asked to give an answer, and I shall ask the stenographer to read that question over again with the permission of the committee.

(The stenographer read the question as requested.)

The WITNESS. Now, I am very anxious to give a direct answer, but I do not know whether I am to answer about Landreau's age in 1857, or about whether he was naturalized and can show a certificate, or whether he was a French citizen, or whether I am to answer on Mr. O'Connor's ability to give a specific answer, which for the life of me I cannot eliminate so as to know what it means. I do not comprehend that question.

The CHAIRMAN. I think that if Mr. Blaine does not understand the question—

The WITNESS. I do not; I confess my absolute and unconquerable inability to answer that question.

The CHAIRMAN. That answers it.

Mr. BELMONT. I am perfectly willing that it shall remain unanswered.

The WITNESS. I confess I do not understand that question.

Mr. BELMONT. Will Mr. Blaine say whether he knows anything about the merits of the Landreau claim? I imagine that he does not. He considers, does he not, that the House having passed it (as he said), and a former Secretary of State having passed upon it, made it entirely unnecessary for him to look into the matter? Did I understand him correctly?

The WITNESS. Are you asking me?

Mr. BELMONT. I am asking you if you know anything about the Landreau claim at all?

The WITNESS. Yes; I know a great deal.

Mr. BELMONT. State to the committee what you know about it.

The WITNESS. I will send up the report of the House of Representatives and of the State Department.

Mr. BELMONT. State what you know about it yourself.

The WITNESS. I know all that is contained in this report of the House, but it would take a good while to read it.

Mr. BELMONT. I can tell you what was contained in the report of the House; it was very little. In the first place, there are no papers on file about this matter. I inquired yesterday.

The WITNESS. In the House?

Mr. BELMONT. Yes. There is nothing about this letter of Mr. Evarts; there is nothing but what is contained in this report of Mr. Wilson. There is nothing to found this claim on.

The WITNESS. You are arraigning Mr. Wilson then, not me.

Mr. BELMONT. Not at all.

The WITNESS. He made the report.

Mr. BELMONT. He made his report upon this famous report of Mr. O'Connor's.

The WITNESS. And Mr. O'Connor made his report on what?

Mr. BELMONT. Mr. O'Connor knows that he has made a mistake.

The WITNESS. Do you state that?

Mr. BELMONT. Yes; on good authority.

The WITNESS. The Committee on Foreign Affairs were unanimously of the opinion

that it was a proper report, and all the accompanying papers of the State Department were full and accompanied it.

Mr. BELMONT. This is all there was of it. So that it seemed perfectly proper that the law officers of the United States should have been consulted about a matter which seems to have been brought with so little evidence to have been decided upon by the department.

Mr. WALKER. The committee has been investigating these matters since the 6th day of March. We have consumed a vast amount of valuable time, and, I think, as a member of the committee, there should be some relevancy in the inquiries propounded to this witness touching the subject-matter of this investigation, so that there will be a possible prospect of our getting through before the 4th of July at all events. I think this line of examination is simply the reiteration of what took place yesterday, and, as a member of the committee, I protest against being kept here and my time being wasted, as it is, in my judgment, in this matter.

Mr. BELMONT. I think there was as much time wasted yesterday in irrelevant matter on the part of the witness, and that is the reason that I said, at the start, that I should endeavor to keep my examination free from personalities. But the manner in which Mr. Blaine came into this committee room this morning relieved me entirely from treating him in any other way than I would the most ordinary witness.

The WITNESS. I ask nothing else; I am nothing in the world but the most ordinary witness, but you treat me as an extraordinary witness.

Mr. BELMONT. We desire to treat you with the greatest deference as a man having been Secretary of State, and it is not my fault—

The WITNESS. It is not your fault that I have been made Secretary of State?

Mr. BELMONT. It is not my fault that you made that very unwarranted and ridiculous assault upon me this morning.

The CHAIRMAN. There are but two courses to be pursued, I think, by the committee. I have appealed to gentlemen on all sides to proceed with the examination, and in that way we will possibly avoid these argumentative interviews. I desire that the examination shall proceed by question and answer. I make that appeal again, and if it is not accepted I see no other remedy but to have the committee go into executive session and determine upon the order of this examination. But in this connection I desire to say that it is the policy of the committee, and has been throughout the examination, to allow the widest latitude in the cross-examination of witnesses, and we are still disposed to pursue that course, so far as we can.

The WITNESS. Mr. Chairman, I want to put in a word there. I am not only willing but I have invited the most searching inquiry possible at the hands of this committee. I have subordinated every engagement I have in the world for it. But at the same time, when you have a two hours' session in a close room with bad air, it is a little trying upon human patience, when great matters of moment and consequence are to be examined into, to have a ceaseless iteration of the same question on the same point, and upon every petty point of personal consistency and personal vindication. And while I, as promptly as I know, desire to apologize to the committee for having shown a little temper, I only ask that it be charged to the frailties of human nature, because it is a little trying to have a great momentous subject like the policy of the United States concerning questions of the magnitude of those involved in this South American policy, minified and stupefied and carried beyond all bounds of contempt and demoralization by the line of examination to which I have been subjected.

Mr. BELMONT. That is not my understanding, that we are going to have an exposition of the purposes and policy of the government, but we are going to try and ascertain—

The CHAIRMAN. The chair does not like to enter upon any argument on the facts involved. I know the room is close and the air is bad, but the committee spends most of its time in a bad atmosphere, and I think we shall get out of this sooner if Mr. Belmont will proceed to put his questions and Mr. Blaine will proceed to answer them directly.

Mr. BELMONT. Exactly.

The CHAIRMAN. Suppose we try that course.

Mr. BELMONT. One thing more before I go on. I am not trying to belittle the great points at issue, but I see no reason why this committee should be the platform for the exposition of any political policy.

The CHAIRMAN. The committee will endeavor to protect itself if it can. You may proceed with your examinations.

The WITNESS. I must interpose another word. There is a class of gentlemen in the United States, largely represented in the newspapers, who want to represent the policy which was outlined and foreshadowed by President Garfield, which, as his officer, I was commissioned to carry out, and which was continued under President Arthur so long as I was his Secretary of State. That policy had for its ends some great objects—objects which I know the President considered of very great consequence to the American Union and to the future of this country. I thought also

that the President under whom I served for three months in the State Department was in the same line of policy. I am not criticising anything that he has done—

Mr. BELMONT. I do not like to interrupt the witness, but I wish to proceed with my examination. I do not see why this committee should be used in a political sense at all.

The WITNESS. I want to say this. These things are of great consequence to the people. As I said, there is a class of gentlemen who represent that that policy was only a dirty effort to get two claims recognized; that is all. And the examination is sought to be confined in a never-ending circle of questions about the Landrean and the Cochet claims, as though there was nothing in a contest which involved the supremacy of American ideas or their subordination on a continent—

The CHAIRMAN. If the witness will allow me, I would like to state that before the examination closes other members of the committee will put interrogatories which will give him the widest scope and freedom, at least so far as our jurisdiction extends. I now insist that the examination shall proceed.

The WITNESS. I am ready; entirely.

Mr. WALKER. I refrained from moving that the committee go into executive session, as had been determined upon earlier in this examination, in case there was any question about which there was any difference between the witness and the examiner—

The WITNESS. There is no difference with me about submitting to any question.

Mr. WALKER. Too much time is being spent on those matters which are entirely outside of the record. It was determined that when such matters arose we would go into executive session, and decide upon some line of policy which might be satisfactory not only to the committee but to all those who might be brought before it.

Mr. BELMONT. I believe the objection of a single member of the committee to the motion to go into executive session defeats it, and I make that objection.

The CHAIRMAN. Very well, then, you may proceed with your examination.

By Mr. BELMONT:

Q. You instructed the minister in Lima to advise his government after reaching his post whether it was in the power of Peru to make any arrangement at home or abroad, singly or with the assistance of friendly powers, to enable Peru to meet the conditions of peace which might be imposed upon her? I refer to the instructions of June 15th.

The WITNESS. What is the page?

Mr. BELMONT. I think it is on page 501. These are the words of the dispatch: "If you can aid the Government of Peru in securing such a result you will have rendered the service which seems most pressing." In the beginning of the dispatch you refer, I believe, to certain propositions which had been brought to the notice of the government. Will you state what those propositions were?

The WITNESS. Where do I state that, in the beginning of the dispatch?

Mr. BELMONT. I am just looking for the words to which I referred. Yes, here it is, "As you are aware"—

The WITNESS. That is the ending of the dispatch, not the beginning.

Mr. BELMONT. That is immaterial.

The WITNESS. Well, go on.

Mr. BELMONT. "As you are aware more than one proposition has been submitted to the consideration of this government looking to a friendly intervention by which Peru might be enabled to meet the conditions which would probably be imposed." Now, what proposition?

The WITNESS. O, the Crédit Industriel.

Q. Well, what other one?—A. None.

Q. Well, why did you say more than one?—A. O, they submitted several.

Q. They submitted several?—A. Yes, several different forms.

Q. And this refers only to the Crédit Industriel?—A. Yes, this is the only one I had any knowledge of at all.

Q. Their plan was financial aid to Peru by which Peru might pay an indemnity to Chili and thus preserve her territory, wasn't it?—A. That was what I understood, but I never examined into the Crédit Industriel at all.

Q. You did not?—A. No, sir.

Q. At the same time you said to your minister, "If you can aid the government of Peru in securing such a result [that is, that financial aid should be found at home or abroad, singly or with the assistance of friendly powers], you will have rendered the service that seems most pressing"?—A. Yes.

Q. Then you instructed your minister upon a matter which was most pressing, in your opinion, but still you did not look into this proposition?

The WITNESS. Mr. Chairman, I will read the paragraph: "As you are aware more than one proposition has been submitted to the consideration of this government looking to a friendly intervention by which Peru might be enabled to meet the conditions which would probably be imposed." Those were the propositions submitted

through Count Montferran, whom I found here in connection with the department when I took the Secretary's office.

Mr. BELMONT. One moment—

The WITNESS. Wait until I state this. I declined absolutely upon my first interview to entertain the proposition. I do not converse in French, but Mr. Hitt, the Assistant Secretary, who came in a very few weeks afterwards—I think it was sometime in March, I cannot state the date exactly—carried on the conversation, and I had a long conversation with Count Montferran in this way about his scheme. He was a gentleman who only spoke in French, and Mr. Hitt, who is very fluent, was the intermediary. I heard his schemes; they looked as though they might be of some value to Peru; but I told him it was a French corporation and that the United States could not possibly lend its good offices by going outside to vouch for or in any way take responsibility for what a French corporation might do; that the government of the United States had not the slightest disposition to obstruct its operations if they could be of service to Peru; that it was not for the United States to interfere to obstruct them, but they could not become responsible in any way for it. I go on to say:

“As you are aware more than one proposition has been submitted to the consideration of this government looking to a friendly intervention by which Peru might be enabled to meet the conditions which would probably be imposed. Circumstances do not seem at present opportune for such action; but if, upon full knowledge of the condition of Peru, you can inform this government that Peru can devise and carry into practical effect a plan”—

Mr. BELMONT. With the assistance—

The WITNESS. No; do not put words into the dispatch. It left it to the Government of Peru to devise a plan—

“by which all the reasonable conditions of Chili can be met without sacrificing the integrity of Peruvian territory, the Government of the United States would be willing to offer its good offices towards the execution of such a project.”

This further illustrated my position there, by a dispatch which I will quote subsequently, and which, I think, will show very plainly the scope and extent which was intended to be given to that. In the autumn there were divers and sundry rumors (notwithstanding the position of the department in regard to this) of various kinds circulating, that Mr. Suarez, who was a sub-agent of the Credit Industriel, had, with General Hurlbut, been operating and using the influence of the American legation to aid the Credit Industriel. On the 27th of October, which was about as early as I got to work seriously in the department after the sad events which ended about the 1st of October (a large part of October being taken up with the French and German visitors, which absorbed a very large amount of time in the department), I telegraphed General Hurlbut and received his reply.

Mr. BELMONT. On what page is that?

The WITNESS. I will read from page 564, which gives both replies and will show the position of the government towards the Credit Industriel. My dispatch is No. 18, and is as follows:

“DEPARTMENT OF STATE,
“Washington, November 19, 1881.

“SIR: On the 27th ultimo I sent you the following telegram: ‘Influence of your position must not be used in aid of Credit Industriel or any other financial or speculating association.’ On the 2d instant I received your reply in these words: ‘It has not been; it will not be.’ [That was General Hurlbut's reply.] My reason for telegraphing you was the continual circulation of rumors that the aid of your legation was earnestly desired to promote the interest of the ‘Credit Industriel of France,’ an association which is making efforts to reorganize the finances of Peru. Agents of the Credit Industriel had visited the Department of State and ineffectually endeavored to enlist the interest of this government in their behalf. However trustworthy the Credit Industriel may be, I did not consider it proper for the department to have anything whatever to do with it. It is a foreign corporation, responsible to French law, and must seek its patronage and protection from France. At the same time it is no part of your duty to interfere with its negotiations with the Peruvian Government. If it can be made an effective instrumentality to aid that unhappy country in its prostrate and helpless condition it would be ungenerous and unjust to obstruct its operations. Your duty is negative, and you will have fully complied with your instruction by simply abstaining from all connection with the association.”

That is everything that the government did about the Credit Industriel.

Mr. BELMONT. We have all that here. Of course the purpose was to aid Peru, I see.

The WITNESS. Yes; we were very anxious to do that.

Mr. BELMONT. I see you were. And is that the reason you pressed the Landreau claim to such an extent upon Peru? Did you feel it was aiding Peru to have to pay—how many millions did you say it was, yesterday?

The WITNESS. About \$7,300,000.

Mr. BELMONT. Landreau himself pretends that it was \$350,000,000.

The WITNESS. Oh, no; Landreau claims only \$7,300,000.

Mr. BELMONT. He is getting down in his figures lately. However, dates are very important—

The WITNESS. One moment. On page 562, in dispatch No. 17, to General Hurlbut, I said:

“Your proposed course in regard to the Landreau claim is approved; but that claim must not, of course, be pressed in any manner that would seem to embarrass Peru in the hour of her great distress. Your previous instruction to use your good offices in procuring an adjudication of the Landreau claim was made in view of the possible fact—of which there was wide rumor—that numerous French and English claims were to be presented, in which event I was anxious that the resources of Peru should not be exhausted in the settlement of other claims to the prejudice and detriment of one belonging to an American citizen.”

But the other claimants have scooped up what the American citizen had as security for his claim. They have taken all.

Mr. BELMONT. We have all these dispatches; I do not see the necessity of reading them.

The WITNESS. I do.

Mr. BELMONT. Because we are trying to get at the meaning of the dispatches and not at the words.

The WITNESS. Generally you get at the meaning of a thing by getting at the words.

Mr. BELMONT. But diplomatic dispatches are written in such a manner that it requires a very close inspection, and to read them in this way will only convey a very confused idea to, I suppose, the newspaper people of whom you spoke just now. But we are not dealing with the newspapers; we are dealing with a question here in the committee.

The WITNESS. In other words, the newspapers will be greatly enlightened if I shall fail to read my own dispatches, and permit Mr. Belmont to give his construction to them.

Mr. BELMONT. This examination is not for the benefit of the newspapers, and that is the reason I want to confine the answers and the questions to these points.

The WITNESS. And have nothing to do with the dispatches.

The CHAIRMAN. I think it is proper for the witness to cite from his dispatch in answer to the direct examination.

The WITNESS. I wanted to have the ruling of the committee on that point, whether a Secretary of State, under examination before the committee about his dispatches, might not be permitted to refer to them.

Mr. BELMONT. I do not see the necessity of referring to them so often as has been done here.

The CHAIRMAN. Let us proceed in regular order.

By Mr. BELMONT:

Q. Will you be kind enough to state what is the meaning of the phrase “friendly powers” in your dispatch?—A. Friendly powers?

Q. Yes, whether it means nations like France or England, the American States, or the United States?—A. It meant anybody that would help Peru.

Q. It did?—A. Yes, sir.

Q. Did you mean that the minister in Lima should ascertain whether Peru would accept the loan of a great war indemnity guaranteed by the United States?—A. I meant that the minister in Lima should ascertain every possible and conceivable thing that was going on in regard to Peru, and let the State Department know, so that it could instruct him.

Q. Did you mean the United States minister should negotiate with France or England to preserve the territorial integrity of Peru?

The WITNESS. What was that?

Mr. BELMONT. You said that “friendly powers” meant anybody who might be willing to assist Peru. Do you say the United States minister could properly negotiate with France or England a financial arrangement to preserve the territorial integrity of Peru?—A. I do not seem to recollect that that absurd idea ever entered my mind.

Q. It did not?—A. No, sir.

Q. The Credit Industriel being a French company, and there having been some dispatches passing between Paris and Washington upon the question of the position of France, I think the question which I asked—

The WITNESS. Do you mean to say or imply that there were any dispatches between Paris and Washington touching the Credit Industriel?

Mr. BELMONT. Oh, no; regarding the connection of France.

The WITNESS. President Grévy proposed a joint convention to Mr. Morton, which I

declined. I was perfectly willing that friendly powers might aid Peru, but I did not feel at liberty, especially during the illness of the President (and I should not have advised it when the President was well), to take the very important step of associating this government with a European government to control anything touching American affairs. My own ideas of policy were quite the converse, and I sent as polite a note as I knew how to dictate (because I think he was quite sincere in his offer) that it was against the policy of the United States to make a request of that kind. That was done, I think, early in September; I think the 6th of September. That would have been a very important step in diplomacy, and one which I should certainly not have taken without the direction of the President. There was no President of the United States at that time able to give instructions. I do not remember the exact wording of the dispatch; but if Mr. Belmont will permit it to be read, I will refer to it.

Mr. BELMONT. It is on page 597, I think.

The WITNESS. I will read that dispatch, Mr. Chairman, with your permission:

“DEPARTMENT OF STATE,
“Washington, September 5, 1881.

“SIR: I have to acknowledge the reception of your dispatch, No. 6, of date August 11, 1881, giving an account of your interview on the day previous with the President of the republic in regard to the attitude and correspondent relations of France, Great Britain, and the United States, with the South American states, Chili and Peru.

“The remarks made and the suggestions offered by President Grévy concerning the situation of affairs in Peru have received that careful and respectful consideration due to the utterances of so eminent a statesman and the Chief Magistrate of France. I hasten to say that this government agrees with him in profoundly deploring the disorders and sufferings that have already fallen upon, and the others that continue to impend over, the people of Peru, and fully shares the humane and enlightened sentiments which have inspired in him a personal interest in that unfortunate struggle, and have induced him to suggest a concerted effort by France, Great Britain, and the United States to bring the conflict to an end.

“Such interventions are frequent in European diplomatic history, and have been sometimes followed by beneficial results in preserving the equilibrium of the powers. But the United States has not belonged to that system of states, of which France and Great Britain are such important members, and has never participated in the adjustment of their contentions. Neither interest nor inclination leads this country to wish to have a voice in the discussion of those questions; but our relations to the states of the American continent are widely different, and the situation is so nearly reversed that this government, while appreciating the high and disinterested motive that inspired the suggestion, is constrained to gravely doubt the expediency of uniting with European powers to intervene, either by material pressure or by moral or political influence, in the affairs of American states. These republics are younger sisters of this government. Their proximity of situation, similarity in origin and frame of government, unity of political interest on all questions of foreign intercourse, and their geographical remoteness from Europe have naturally given to American states close and especial relations to each other, and in the course of time reared them further from the European system.

“The interests, commercial and political, of the United States, on this continent, transcend in extent and importance those of any other power, and where these immense interests are deeply involved this government must preserve a position where its influence will be most independent and efficient. In the contest between Peru and Chili, the United States has watched the progress of the struggle with painful interest, and endeavored, as opportunity offered, to arrange terms of peace; and you will say to the French Government that, while the interest which President Grévy has manifested for the cause of peace, and his sympathy with the unhappy victims of this war, find an earnest response here, both from the government and the people, the United States declines to enter into negotiations with European powers for a joint intervention in the affairs of Chili and Peru.

“I have, &c.,

“JAMES. G. BLAINE.”

I thought that was a very prudent dispatch.

Mr. BELMONT. That was in answer to Mr. Morton?—A. That was on the 6th of September, a fortnight before the death of the President, when there was no Executive head to the government.

Q. This was in answer to Mr. Morton?—A. In answer to Mr. Morton, who communicated President Grévy's desire for this intervention.

Q. I wish to call your attention to the words he uses. He speaks of his conversation with the President of the French Republic, and says: “In using this language, his excellency indeed acknowledged the right of Chili, as a conquering power, to cer-

tain indemnities and privileges to be embodied in the final treaty of peace, &c., but which he thought required particular modification, and he was of the opinion that another attempt at mediation, on the part of foreign governments, and especially of the United States, was requisite for the purpose of reaching a satisfactory solution of the present state of chaos and disorder, which now there obtains." Then he goes on further, in another part of the dispatch, to speak of "the future development of private enterprise, as well as of the employment of foreign capital, by which alone its natural resources could receive extension." I point this out in order to ask you if you noticed, in the public prints, the contract signed by the house of Morton, Bliss & Co., and the Crédit Industriel, in which there is a condition of mediation on the part of the United States; that is to say, the contract depends for its performance upon that, if my understanding is correct. I merely ask that in this connection to bring out the fact whether this had come to the knowledge at all of the department, which I doubt very much.—A. It had not. The department has had no knowledge of it whatever, nor had it come into the public prints until after I was out of the State Department. It had no connection whatever with the department, nor any correspondence with Mr. Morton as French minister—none whatever. I never heard of it in that connection. All I ever heard of it was as a business matter.

Q. Before the departure of the minister to Peru, did you converse with him as to the objects of his mission and the way in which they should be carried out, and in such conversations with the minister did you specifically instruct him to inform the Chilean authorities, occupying Peru, that the wishes and interests of our government must be considered in the settlement of terms of peace between Chili and Peru?—A. I gave him no other instructions than are contained in the letter of June 15, and you will find the whole of that there.

Q. Then there were no verbal instructions?—A. No; none whatever; and there was no "Go it, Steve" written on the margin of the dispatches either. I need hardly say that that silly story is false.

Mr. BELMONT. I was not asking you that question.

The WITNESS. But I thought I would anticipate it.

Mr. BELMONT. Did you intend the Chilean Government to understand that the United States would not view with favor any peace between Chili and Peru, brought about independently of the interests and wishes of the United States?

The WITNESS. Do you mean independently of the wishes of the United States?

Mr. BELMONT. Yes.

The WITNESS. I do not quite understand you.

Mr. BELMONT. I mean in this sense—

The WITNESS. Are you quoting from a dispatch?

Mr. BELMONT. No. You were speaking of the policy of the government, and therefore I am asking upon that point, as to whether it was the interest of the United States that there should be peace, and whether it was the wish of the United States that peace should be made without the dismemberment of Peru?

A. The United States expressed a very earnest desire that peace should be made without the dismemberment of Peru, but it never said it would oppose a peace regardless of that; it never laid that down as any condition upon which it would insist. I can answer the remark by referring to—

Mr. BELMONT. Is it not preferable to answer the questions without reading the dispatches?

The WITNESS. Oh, no. I think if you ask me what I instructed the minister, it is greatly preferable to see just exactly what I said than to give a paraphrase of it.

Mr. BELMONT. I am not asking for the instructions; I am asking their meaning.

The WITNESS. I have never written an instruction, I think, which requires a commentator.

Mr. BELMONT. I am only asking about the intentions of the government. If you do not care to say what they were, you need not repeat them.

The WITNESS. I do care.

Mr. BELMONT. But I see no necessity of wasting time in reading long dispatches.

The WITNESS. But I do. I think that is the very pith of the whole matter. When you ask me about what I intended to instruct the minister to Peru, I say I intended just what I wrote here in the dispatch.

Mr. BELMONT. I asked you if there were any verbal instructions, and you say there were. We will let the matter rest there.

The WITNESS. I do not propose to let it rest there.

Mr. BELMONT. I do not think it necessary to read that.

The WITNESS. I think it is necessary.

This is what I said:

"The United States cannot refuse to recognize the rights which the Chilean Government has acquired by the successes of the war, and it may be that a cession of territory will be the necessary price to be paid for peace. It would seem to be injudicious for Peru to declare that under no circumstances could the loss of territory be accepted

as the result of negotiation. The great objects of the provisional authorities of Peru would seem to be to secure the establishment of a constitutional government, and next to succeed in the opening of negotiations for peace without the declaration of preliminary conditions as an *ultimatum* on either side. It will be difficult, perhaps, to obtain this from Chili; but as the Chilean Government has distinctly repudiated the idea that this was a war of conquest, the Government of Peru may fairly claim the opportunity to make propositions of indemnity and guarantee before submitting to a cession of territory. As far as the influence of the United States will go in Chili, it will be exerted to induce the Chilean Government to consent that the question of the cession of territory should be the subject of negotiation and not the condition precedent upon which alone negotiation shall commence. If you can aid the Government of Peru in securing such a result, you will have rendered the service which seems most pressing."

Now, Mr. Belmont read that in connection with the financial scheme, and totally distorted it. My dispatch continues:

"Whether it is in the power of the Peruvian Government to make any arrangements at home or abroad, singly or with the assistance of friendly powers, which will furnish the necessary indemnity or supply the required guarantee, you will be better able to advise me after you have reached your post."

No; I cannot possibly make that instruction any plainer than it is.

MR. BELMONT. It is very natural that there should have been an idea of a financial arrangement in relation to an indemnity. I do not see what else it could have meant. What was the indemnity to be?

THE WITNESS. This was at the time——

MR. BELMONT. What was the indemnity to be paid?

THE WITNESS. I want to answer if the gentleman will cease to reiterate the question. This was to bring Chili into the line of considering whether it would take any other indemnity than land. The understanding given to General Hurlbut was: You will aid Peru by making this the main object of your mission, to induce Chili to consider the question of leaving this to a constitutional government which shall make a treaty of peace in regular form, and the most pressing need is to find out whether she will be willing to take an indemnity which does not involve the destruction of Peruvian territory.

Q. Was that indemnity to be money; what else could it have been?—A. Of course it was to be money——

Q. That is all I want to know; I do not see the necessity of such a long answer.

MR. KASSON. I would like to ask Mr. Belmont if he is approaching the end of his inquiry as to the policy of the government in South America. If he is, I do not wish to interrupt his inquiries, but if it is likely to be prolonged I would like to know it.

MR. BELMONT. Mr. Blaine desired, I think, to go into that subject himself.

MR. KASSON. We have not really jurisdiction of that matter. I do not wish to interfere with your inquiry unless it is to be prolonged indefinitely.

MR. BELMONT. No, it is not; I, myself, preferred to speak to the points of the investigation, but Mr. Blaine wanted to go into the policy of the government himself.

[To the Witness]. On the 2nd of September you received a dispatch from the minister in Lima——

THE WITNESS [interrupting]. Speaking about my desire to enter into matters outside of the subject under investigation, perhaps I may be permitted to say that the whole scope of the examination since the first day has been outside of the resolution, or pretty much the whole of it. The matters I wanted to present as matters of importance should not be ruled out; they are not trivial matters which should be ruled out.

MR. KASSON. I see the necessity of your making a full statement of those matters.

MR. BELMONT. On the 2nd September you received a dispatch from the minister, did you not, in which, after referring to the personal conferences held with you, he informs you that prompt action is required to save Peru from being obliterated; and also informs you that Peru offers to pay, and can pay, a money indemnity.

THE WITNESS. What page are you reading from?

MR. BELMONT. It was received on the 2d September.

THE WITNESS. What is the page on which the dispatch is printed?

MR. BELMONT. I do not know the page; it was received by the department on the 2d September.

THE WITNESS. I think I have the one you mean; it is on the 510th page. Now read to me the part you refer to; read the point you desire to call my attention to.

MR. BELMONT. You will find one point on page 512, where he says inasmuch as Peru offers to pay, and can pay a money indemnity, the forcible annexation of territory ought not to be permitted. I wanted to know why this dispatch was not answered.

THE WITNESS. That prescribed no mode of paying the indemnity; it was another form of saying that she was able to pay; that her wealth is sufficient to pay. That

was not answering as to the mode in which the money could be raised at all; it was simply saying that Peru was able to pay.

Mr. BELMONT. General Hurlbut was told that the most pressing duty for him to perform was to see if such an arrangement could be made.

The WITNESS. That does not speak of the arrangement to be made.

Mr. BELMONT. And his information to the department was that he had performed this most pressing duty.

The WITNESS. In those lines?

Mr. BELMONT. Yes; because he says inasmuch as Peru offers to pay, and can pay a money indemnity.

The WITNESS. That does not relate to the mode of payment at all; that was only asserting she was able to pay.

Mr. BELMONT. Why was that dispatch not replied to?

The WITNESS. That appears to have come here on the 2d September. The remainder of the month of September was engrossed by the Cabinet in connection with the last days of the President and his burial. After that I went home for some rest, and remained there until the 8th or 10th October. I could not answer so grave a dispatch as that, involving matters of very great moment, without consultation with the President. It was not a dispatch which the Secretary of State alone would want to take any special responsibility about, and I never got into any intercourse with the President upon the Chili-Peruvian question until after the French and German visitors were disposed of.

Q. What was the next dispatch after this; was it not in relation to these claims; I think so; on the 17th November?—A. Yes; I think it was on the 17th November.

Q. That was the matter of the Peruvian Company. Again, on the 19th November, also, there was a dispatch in regard to the matters of the Peruvian Company?—A. Yes; I told him on the 17th November that his course in regard to the Cochet claim was entirely approved; that it was not a claim on which the Government of the United States would intervene.

Q. Yes; I remember. Will you state if any one showed you that letter of General Grant's, in which he said it was about time for the United States to step in?—A. I was very much surprised at Mr. William Henry Hurlbert's bringing on the witness stand a letter which I supposed was a private letter of General Grant's to Mr. Elmore. Later than that date to which you refer, I should think it was very nearly the 1st December, Mr. Robert Randall showed me a letter from General Grant.

Q. He was the counsel of the Crédit Industriel?—A. Yes, sir. He showed me a letter from General Grant. I think it was—I am not able to vouch that it was—identical in phrase with the letter given; I presume it was. I thought it was a breach of confidence that that letter should be circulating in that way; I do not mean a breach of confidence in Mr. Randall to show it to me, for he thought, and I think he found it was a safe depository of the letter, because I never spoke of it to any human being. But I was very much surprised to see that letter come out in testimony. I do not think General Grant ever thought it was to be made public, or that he was intermeddling in the matter in any way; I never so understood it.

Q. You said yesterday that you knew nothing of the ownership of the Landreau claim?—A. No, sir.

Q. You did not know who was interested in it?—A. No, sir. I do not know a human being who is interested in it besides himself.

Q. Did not General Grant appoint him consul to Santiago de Cuba?—A. Yes; Mr. Fish did.

Q. You never heard that Mr. Corbin, General Grant's brother-in-law, had any ownership in it?—A. Never, until the testimony of Mr. Hurlbert the other day; I think he mentioned it. I never heard of it until then. That would concern Mr. Fish and General Grant, I suppose.

Q. Undoubtedly; I only mention it because the claim seems to have been pressed lately more than it was ever before.—A. Oh, no; it was only pressed at the time when the property to which it attaches was going to be gobbled up by other people, as it has been.

Q. And you believe still that Landreau had the right to ask the good offices of this government?—A. For the purpose —.

Q. For any purpose whatever?—A. Yes, certainly; he had a right to the good offices of this government to ask that he might have a trial. Mr. Landreau never asked this government at all to intervene to demand the payment of his claim, nor even to state its amount, or anything like that. He simply asked that he should have the right to be heard before a Peruvian tribunal in support of his claim against the Peruvian Government; and it seemed to me that it was a very modest request for any American citizen to make, and I cannot imagine any American citizen—any reputable citizen, a man not of bad character—who would not have the right to make such a request. Mr. Landreau was esteemed to be a man of good character. He has been a very excellent officer, that I can testify to myself. If Mr. Landreau should have a

claim against Peru or any other government on the face of the earth, and he should come to the State Department and say, I am unable to get a hearing; now I ask you if you will instruct the minister at Constantinople, or Madrid, or wherever it might be, to use his good offices to get me a hearing; I do not ask the government to assume it; I do not ask them to state its amount; I do not ask them to take one particle of responsibility about it; but I ask, as an American citizen, that the State Department of the United States will say to its minister at that court that I am a reputable citizen, and that I ought to be heard. If the State Department cannot do that for a citizen of the United States, it ought to close; it ought to shut up; that is all.

Mr. BELMONT. It is very doubtful if he is a citizen in the first place.

The WITNESS. That I am not arguing. The Senate of the United States thought so, and the President thought so.

Mr. BELMONT. The Senate took no action about it.

The WITNESS. The Senate confirmed him as consul to Santiago de Cuba, and that could not have been done unless he was a citizen.

Mr. KASSON. He must have been a citizen or he could not have been appointed as consul.

The WITNESS. That I had the pleasure of informing Mr. Belmont yesterday.

Mr. BELMONT. That is a doubtful question. The fact is, a man may be appointed consul if he draws a salary. There are full consuls who do not draw salaries who are not citizens of the United States.

The WITNESS. Oh, no, no, no; that is utterly absurd.

Mr. KASSON. That can be determined by looking at the Revised Statutes.

Mr. BELMONT. Look in the Revised Statutes and you will not find anything to support that proposition. It is a very small matter, but we might as well have it cleared up. I tell you what I think would be a much better way of getting at it before you read the statutes. The fact is that the following consuls at present (of course you know all about the department) are not citizens [reading from a paper]: Howard Fox, at Falmouth, England; Henry Fox, at Plymouth, England; Edward Hancock, at Patras, in Greece; D. C. Van Romondt, at St. Martin, Netherlands; Joseph Rawicz, Warsaw, Russia; Emelie Courtade, La Union, Salvador; F. G. Gade, Bergen, Norway. J. C. Landreau is a consul in Schedule B (of course you know all about that), with a salary of \$2,500; and in that sense he is taken to be a citizen, because he has a salary, but not because he was confirmed by the Senate, or because he is a consul. Now you might as well read the statute.

The WITNESS. I want to find the clause in the Constitution about the President's power to appoint consuls.

Mr. BELMONT. The President has the power to appoint any man a consul, but the law says that he shall not receive a salary unless he is a citizen.

Mr. KASSON. The law prohibits anybody but an American citizen from holding the position of consul.

Mr. BELMONT. How does it happen, then, that this list of American consuls is in existence to-day?

Mr. KASSON. I do not know the facts; I suppose the question of citizenship is involved in the papers.

Mr. BELMONT. They are not citizens.

The WITNESS. This is the clause in the Constitution to which I referred:

"He" (that is the President) "shall have power, by and with the advice and consent of the Senate, to make treaties, * * * and he shall nominate and, by and with the advice of the Senate, shall appoint ambassadors, other public minister, and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law."

You might just as well assume that the judge of a United States court or an ambassador could be appointed outside of citizenship as a consul. The President derives authority to nominate consuls on exactly the same basis, and a foreigner, in my judgment, has never been nominated to the Senate for a consulship and confirmed, when he was known to be such, since the foundation of the government.

Mr. BELMONT. This list of consuls will have to be explained in some way.

The WITNESS. I have nothing to do with that.

Mr. BELMONT. Nor I either. That is a matter for the State Department. You stated yesterday, in regard to consular agents, that they were the only ones who could be appointed who were not citizens, and I asked you in regard to Dr. Gardini, whom you appointed consul to Bologna—was it—a very nice position.

The WITNESS. Yes; it is worth \$125 a year.

Mr. BELMONT. He told me he had no pay at all; that is what he told me; however, he is not a citizen.

The WITNESS. Why, of course not. But a consular agent and a consul are different.

Mr. BELMONT. My point is, that a consul may be appointed who is not an American citizen.

The WITNESS. Do you mean to say that Dr. Gardini was a consul?

Mr. BELMONT. No; he is a consular agent. But as you were instructing the committee on this point I thought it was just as well to see what the exact state of things was; for I am anxious to be instructed.

The WITNESS. I see nothing in that to shake the effect of what I said, that the President never nominated any one but a citizen of the United States to be a consul.

Mr. BELMONT. But the fact is there are consuls who are not citizens of the United States.

The WITNESS. Then there has been a blunder and a violation of the law. Some man might have sneaked himself in in some irregular way. Consular agents and consular clerks may be accepted, as a matter of course. A consular agent is more apt to be not a citizen than a citizen, because they are mere appendages to the consulships in the little towns that lie around about.

Mr. BELMONT. Now, in regard to the question of international law—and I speak of that because the resolution of the House is as follows: The President is asked to take such steps as in his opinion may be proper, and in accordance with international law, to secure to the said J. C. Landreau a final settlement and adjustment of his claim against the Government of Peru. Did international law permit, in your opinion, the executive department in this case to intervene against Peru to enforce the claim of J. C. Landreau upon the contract of assignment which he made to his French brother?

The WITNESS. There was never any attempt to do it.

Q. I supposed, of course, the department knew the fact that J. C. Landreau had applied also to the French Government in 1877. That was in a dispatch from Mr. Gibbs to Mr. Evarts. I merely mention the fact to show that J. C. Landreau was also endeavoring to obtain the co-operation of the French Government.—A. O, but this resolution asks them to do it.

Q. Yes, I know it. His brother was a Frenchman. It is said that his brother in the contract—

The WITNESS. Read the last clause of that resolution.

Mr. BELMONT. I do not know whether I will or not. I shall read it if I can find it.

The WITNESS. Then I will detain the committee and read it, for I have it.

Mr. BELMONT. I have it here. The final clause of the resolution is: "That if, in his opinion, it is proper to do so, the President invite the Government of France to co-operate with the United States in this behalf." This is the resolution which slipped through the House. I have inquired in the House, but nobody remembers anything about it, or very few.

The WITNESS [to Mr. Wilson]. Did you sneak that through the House, Mr. Wilson?

Mr. BELMONT. Mr. Wilson had nothing to do with it.

Mr. WILSON. I had it passed by the House.

The WITNESS [to Mr. Wilson]. Were you a member of the committee that reported it?

Mr. WILSON. Yes.

The WITNESS. Was there anything surreptitious about it?

Mr. WILSON. I reported it unanimously from this committee, and in the next Congress it was reported by Mr. Hill, and received the unanimous support of the committee.

The WITNESS. It received the unanimous support of the Committee on Foreign Affairs in two Congresses.

Mr. WILSON. Yes, sir; and on a full statement of the case it went through the House unanimously; there was no objection to it.

Mr. BELMONT. Of course; it was one of those things that go through as a matter of course.

The WITNESS. It was so much a matter of course that it went through as a matter of course.

Mr. BELMONT. I have inquired of members about it, and find they have not any recollection about the matter. The fact is that J. C. Landreau was not the discoverer of the guano deposits, and did not exhibit any contract with his brother. He did not have any contract with Peru. He was a minor in 1859, when he claimed to have become a partner of his brother. This brother was, and is still, a French citizen, and had sought in vain assistance by diplomatic interference. The French Government did not support his claim, although he was a French citizen; but Mr. Fish recommended his claim in 1874 to the good offices of our minister. You say there is no distinction between official good offices and unofficial good offices. That is what he did, using the "unofficial" good offices of the American legation at Lima. And the report on which this claim is founded I have already alluded to as being inaccurate. So that, taking that in connection with the fact that J. C. Landreau, while claiming to be an American citizen, applied to the French Government in 1877, it hardly seems as if he was entitled to much consideration on the part of our government. Now—

Mr. KASSON. If this is to go into the record, I want to know whether that is the statement of Mr. Belmont himself, or whether he gets it from some public document?

Mr. BELMONT. That is my own statement. It is like a great deal that has been introduced here in the form of evidence. It is the form of my question.

The CHAIRMAN. Without any interrogation point?

Mr. BELMONT. Yes, and it is like the evidence that has been given. [To the witness.] Did you not urge on Chili through the diplomatic agents of the United States, that Chili should be satisfied to accept a pecuniary indemnity from Peru, and forego territorial acquisition?

The WITNESS. Yes, sir; I did that by direction of President Arthur.

Q. From what source did you expect that Peru would be able to get the money with which to pay this indemnity?—A. Oh, she had an enormous property on which to get it.

Q. By what arrangement was this to be brought about?—A. That I did not busy myself about. But Chili, aided by the English bondholders, has taken thirty times the amount of property from her that would have raised the war indemnity.

Q. Did you expect that the Landreau claim could be utilized by Peru as a means of obtaining the money to pay the indemnity to Chili?—A. I did not, and I instructed the minister not to press it upon Peru to embarrass her, but to press it if the other parties were going to run away with the property.

Q. But you said yesterday when Calderon was arrested and taken to Chili, that there was some negotiation going on, or some chance of Landreau's getting his rights; didn't you say something of that sort?—A. I don't remember in what connection that was.

Q. I have here the testimony. I asked yesterday whether Calderon was not taken prisoner, and you say yes, he was taken prisoner to prevent this very thing from being done.—A. You mean simply to prevent the Landreau claim being recognized?

Q. Yes.—A. Oh, no; I never said that.

Q. I asked you this: Whether the courts remained in the same condition at the time you wrote your dispatches of August 4 and December 16 as they were when the original instructions were given on June 15? You said no; that the Calderon Government was coming into existence, and there seemed to be some chance, as I understood, of the courts resuming their functions.—A. Yes.

Q. And the purpose being, so far as our government was concerned, to get an adjudication of this claim. Now you say Calderon was arrested just at the time this very thing was to be done?—A. It was not "a fly on the wheel."

Q. It was not?—A. No.

Q. Still it was something. However, we will let that go. By what method or contrivance did you think that the claim of J. C. Landreau could be used so as to enable Peru to obtain therefrom the money with which to satisfy Chili?—A. I have suggested no such thought or idea; never in the world.

Q. Did you at any time entertain the idea that the Credit Industriel could be used by the United States to furnish to Peru the money with which she could pay?—A. Not by the United States, but I thought it might be by Peru; but I declined to have anything to do with it, and instructed our minister, as I have read here, neither to aid nor obstruct it.

Q. How could Peru be benefited according to this policy?—A. Peru had a property worth a thousand million of dollars in a very small territory, and it would not have been very difficult to raise on a mortgage sixty million dollars, and that would have been nearly three times what the Chilean war cost.

Q. Was that the purpose of the Peruvian Company?—A. I know nothing about the purposes of the Peruvian Company.

Q. How could this policy have been carried out?—A. What policy?

A. This policy to prevent the dismemberment of Peru; the policy being this, according to the instructions to the minister, that his most pressing duty was to see if any arrangement could be made by which Peru could pay this financial indemnity—this money indemnity.

A. No; that is a misquotation—a total misquotation.

Q. You, then, do not alone go to the dispatches?—A. Oh, yes; we will go right to them; you must quote them correctly or not at all. I do not put it in that form.

Q. You said if you can aid the Government of Peru in securing such a result you will have rendered the service which seems most pressing?—A. What result?

Q. That is exactly what I want to know; that is what I ask?

The WITNESS. What page are you on?

Mr. BELMONT. Page 501.

The WITNESS. Mr. Chairman, this is a very dreary business, I must say.

Mr. BELMONT. I am sorry the witness does not like it.

The WITNESS [reading]. "It will be difficult, perhaps, to obtain this from Chili;—[that was the willingness to accept anything else but a cession of territory]—but as the Chilean Government has distinctly repudiated the idea that this was a war of conquest, the Government of Peru may fairly claim the opportunity to make propositions of indemnity and guarantee before submitting to a cession of territory. As far as the

influence of the United States will go in Chili, it will be exerted to induce the Chilean Government to consent that the question of the cession of territory should be the subject of negotiation and not the condition precedent upon which alone negotiation shall commence. If you can aid the Government of Peru in securing such a result, you will have rendered the service which seems most pressing"—that result being to bring about such a state of negotiations as would permit the establishment of an orderly constitutional government in Peru, and then negotiations, just as two great civilized nations in Europe would make, as to terms of peace; and then, if it is a *dernier resort*, a cession of territory. The United States never said they would attempt to prohibit a cession of territory. They said to Chili, do not do it in a spirit of conquest, in a mere spirit of rapine, as they have done it, and as a free-booter does it, but do it upon forms of international law with the recognized government, and under a Christian treaty; do it in that way.

Q. What I want to know is this: how the United States was to help Peru pay this indemnity, the intention being, as I understand, that Peru was to be helped?—A. If Peru had been let alone in her own property—

Mr. BELMONT. And not had claims brought against her.

The WITNESS. If Peru had been let alone in her own property she had twenty, thirty, or even more fold than that, and they have taken more than a thousand millions of property to satisfy a war that cost twenty-two million five hundred thousand dollars; that is what they have done.

Q. How are we to prevent that; that is what I want to know? Our influence in South America, as you stated, has been very much injured, and how could we prevent it?—A. Mr. Trescot bore from the President of the United States a very important and weighty dispatch. It was a dispatch in which the whole moral power of the United States was to be used, as the friend of both parties, in bringing about an adjustment. It was a communication written with great care, and received the approval of the President with entire conscientiousness. That communication, and all its instructions, were practically revoked when Mr. Trescot reached Santiago de Chili; and then to make it still more useless, and destroy its efficiency still more, it was published in the United States. On the 26th of January a communication was sent to the Senate of the United States covering the papers that are in that book lying before you, and included this dispatch to Mr. Trescot. That was the last possible hope of using any influence of the United States in South America; I considered it abandoned. That, I think, was on the 26th of January. I learned with very great astonishment, not to say excitement, towards the middle or latter part of the afternoon of that day, that the Chili-Peruvian papers, many of which might just as well be made public as not, contained this dispatch, and I was dumbfounded; I was utterly amazed that that dispatch was to be sent to the Senate.

By Mr. WILSON:

Q. I have to suggest, as you have not quite answered Mr. Belmont's question, as I understand it, that you state how, in your opinion, this spoliation might have been prevented.—A. I will come to that in a moment. He was asking me how we were going to use our influence, and I was showing him how it had been destroyed. That dispatch was sent to the Senate with these other papers; I thought that I had an understanding with the President of the United States that the dispatch should not be communicated to the Senate until Mr. Trescot returned, anyway, at the time I left the department. There was no need of that dispatch ever being put in print—no need whatever. I think there has been nothing more vicious, of late, in the diplomatic annals of the United States than the practice which has grown up of the perpetual publishing of the dispatches of the State Department.

Mr. BELMONT. In that connection let me ask you this: You remember the first dispatches published were those which appeared in the newspapers, which you published yourself; that is what excited so much curiosity, and resulted in the whole correspondence being called for by the House and Senate.

The WITNESS. I understand all that. That bore upon points entirely different from this.

Mr. LORD. I desire to inquire whether I understand the purpose of this examination. Is it for the purpose of inquiring into and reviewing the whole South American policy of the United States, or is it to be confined to the inquiry as to whether any officer of the United States has illegitimately or corruptly connected himself with any commercial enterprise to be carried on in South America, in which Americans may be owners or part owners? I had supposed that our inquiry was to be confined to something like that. Otherwise, I see no end to this inquiry, if it is to take in the whole South American policy, and require the reading of the whole diplomatic record. And it seems to me that we are so far outside of the resolution under which we are acting (though it may be the usual practice to go outside of it to some extent, as has been said) that we should make some effort to get back again.

Mr. WILSON. I think that is a pertinent inquiry of Mr. Belmont's.

Mr. LORD. It is pertinent, but it is a long way outside of the record.

The WITNESS. That dispatch was made public contrary to my understanding. I telephoned immediately to the White House, asking that it might be withheld from the Associated Press. I telephoned also to the Secretary of State, begging that it might be withheld from the Associated Press. I addressed a note to the President, at five or half past five that afternoon, pointing out what I thought would be the evil of it, and protesting against it. But it was published. Mr. Trescott considered his mission at an end when that was made public. It has not been of any use to keep him in South America since; not the slightest.

The CHAIRMAN. The Chair has made no response to these suggestions which have been made, for the reason that it has understood that this was a method adopted by Mr. Belmont in his examination to inquire as to the relation of the ex Secretary of State (being then an officer of the United States) with the Peruvian Company, and from that point the examination has drifted into these general matters connected with the South American policy; and while perhaps, strictly, it might be ruled out, the Chair is still of the opinion, with due deference to the committee, that it will be an economy of time to pursue the examination and complete it, as I hope it will be, within a very short time.

Mr. KASSON. I want to say one word now on that point, without wishing to repeat anything. The question submitted to us is whether "one or more ministers plenipotentiary of the United States were either personally interested or improperly connected with business transactions in which the intervention of this government was requested or expected"; that and the subject of the lost papers constitutes our investigation.

Mr. LORD. Mr. Kasson raises the precise point I did.

Mr. KASSON. I shared the chairman's hope that we would soon get back to these points, as was suggested to Mr. Belmont a while ago. But we do not approach them; we are traveling around in the same general circle of the general South American policy.

The CHAIRMAN. The chair appreciates that we have drifted away from our jurisdiction, technically, within the scope of the resolution. But I still suggest to the committee that I think the quicker and the better way is to go on, as Mr. Belmont assures us that he will complete his examination speedily, and perhaps within the next half hour.

Mr. BELMONT. O, much sooner.

The CHAIRMAN. But if Mr. Orth insists on his motion——

The WITNESS. Let me answer that question first.

Mr. ORTH. I call for the reading of the rule which has been adopted.

The CHAIRMAN. There is no question about the rule; but the chair will submit it to the committee if Mr. Orth insists upon it.

Mr. ORTH. I will modify my motion by saying that I will make it when the hour of 12 comes.

The CHAIRMAN. Very well. Then let the examination proceed until the hour of 12

By Mr. BELMONT:

Q. What I asked was, how the government expected a financial indemnity, a money indemnity to be paid by Peru—by what arrangement?—A. They instructed the minister to use his good offices to find out if Peru could devise a mode; it was not for the United States to devise these things.

Q. But the minister stated that he had found the means?—A. O, no; he never said any such thing.

Q. He said Peru can pay?—A. O, that is a different thing. I say Peru can pay. I say that a man who has a thousand million can pay fifty million. But when you say he has the means that only shows a power; that does not devise a method. Nor did we instruct General Hurlbut to devise a method. I properly instructed him to ascertain if Peru could devise a method. I wanted to leave that for the action of Peru wholly, and that is the whole spirit of the instructions. There was never an attempt on the part of the government of the United States to devise a method or suggest a method.

Q. Did you not know already, by Mr. Christiancy's dispatch, that Peru really could do nothing at home, and that her assistance must come from abroad?—A. O, not at all, if Peru was not despoiled of her property. Of course, the money would have to come from abroad, but she had the property on which the money could be raised. She had property that could be worked enough each year to pay more money than the whole Chilean war cost.

Q. You know nothing of the purposes, then, of the Peruvian Company, or the arrangement of the Crédit Industriel in that connection?—A. No; sir; not at all. I declined to have anything to do with the Crédit Industriel, and as to the Peruvian Company I suppose that was a sham from the beginning. There was nothing in it at all.

Q. Did you think that the enforcement on Peru of the Landreau claim was a good way to preserve the integrity of the territory of Peru?—A. The enforcement of the Landreau claim on Peru was never asked.

Q. Did you think that was a good way in which to preserve her territorial integrity?—A. The enforcement of the Landreau claim upon Peru was never asked.

Q. Then you did not think it was a good way to assist Peru to bring this claim before her courts?—A. The enforcement of the Landreau claim upon Peru was never asked by this government.

Q. Your point is in regard to the word "enforcement"?—A. Yes, precisely; that is all the point there is about it.

Mr. BELMONT. I am through with the witness.

The WITNESS. Now, before I go, I call the attention of the committee to the fact—and I must emphasize it, and I intend to do it very mildly; I repeat that I intend to do it mildly, and I certainly do not do it with the intention of renewing any personal altercation with Mr. Belmont. I lost my temper for a moment at the beginning of this morning's session, for which I was sorry and apologized to the committee. On the first day of my examination I called attention to the fact that, in prefacing a question to me, Mr. Belmont, in his peculiar way—

Mr. BELMONT [interrupting]. Now why emphasize that peculiar way?

The WITNESS. Because your questions have always a very long recital in them; they are not direct.

Mr. BELMONT. And your answers also have a long recital in them.

The WITNESS. Mr. Belmont said in this record—and that is what I would emphasize. In this he says:

"On the 16th of December Mr. Blaine wrote his last dispatch to South America, in which he says, in effect, that there shall be no treaty of peace without a recognition of the Landreau claim."

Now the words out of which Mr. Belmont makes that observation are these:

"While disabusing the mind of the Chilean Government of any impression that the United States meditates intervention in behalf of private claims, beyond the use of its good offices, you will say that justice seems to demand that Landreau should have an opportunity to be heard in support of his claim before a tribunal in Peru competent to decide it, and that, if decided in his favor, a treaty of peace which might cede territory to Chili should not be made in disregard to any rights which Mr. Landreau may be found, after an impartial judicial investigation, to possess."

"Further than this the Department of State has not felt authorized to go, and I must express the hope that the Governments of Peru and Chili, to both of which you are accredited, will recognize the moderation and justice of the request made by this government."

Mr. Belmont solemnly asserts, and has, during two days, conducted, by tortuous questions, an investigation to establish his original misrepresentation of me—that I had stated that no treaty of peace should be made in which the Landreau claim was not recognized.

Now, I have always heretofore regarded Mr. Belmont as a gentleman, but if he leaves this committee without acknowledging that that was an error, I shall be compelled to change my judgment of him. All I ask of him is, to say that he made a mistake; that he misread my language; that instead of saying what he avers I said, that I said directly the opposite, that "you must disabuse the mind of the Chilean Government of any intention on the part of the United States to intervene for private claims beyond the use of good offices, but that if Landreau shall have a judgment in his favor justice would seem to demand that in settling the treaty his rights should not be disregarded."

The word *shall* does not occur. It is a mere direction of what should be done in pursuance of the laws of justice, while all the way through, previous to it, anything else than good offices was pointedly and peremptorily disclaimed. And yet Mr. Belmont adheres and insists upon saying that I declared, in my last instructions to Mr. Trescot, that no treaty of peace should be made that did not recognize the Landreau claim. That has been the slogan of the dirty Democratic press throughout the United States. It is the slogan of the press that stands as prompter and mentor behind Mr. Belmont—

Mr. BELMONT. Now, don't you see that the aggressiveness is on your part?

The WITNESS. I am very aggressive on that point; I am very aggressive against a statement which is not true, and I do not want to say a word which is not perfectly parliamentary; but I say that Mr. Belmont speaks there that which is not the truth, absolutely not the truth, and without any semblance of truth, and that up to this time, being advised of it on Monday, and having for two days an opportunity, as a gentleman, to correct it as a mistake, he has persistently refused to do so. That is what I state.

Mr. BELMONT. Mr. Blaine has—

Mr. WILSON. Mr. Chairman, I hope—

Mr. BELMONT. This is my affair, Mr. Wilson, entirely.

Mr. WILSON. I thought you were through.

Mr. BELMONT. Mr. Blaine, you have, upon the slight mistake of a printer—

The WITNESS. No mistake of the printer at all.

Mr. BELMONT. Wait a moment, now, until I speak. You have asserted a falsehood, because I said the other day in the committee that I was not responsible for those quotation marks—

The WITNESS. This is not in quotation marks—

Mr. BELMONT. Wait a moment. The construction which I put upon your dispatch is a correct one, and I leave it to those who choose to read your dispatches carefully enough, to decide between us. As to your statement, the final one which you made, I do not propose that this committee-room, or that the press, or that the country in any way, shall undertake to judge my method of replying to your assertions. That I will convey to you in private.

Mr. WILSON. I have a few—

The WITNESS. I want to state this: The quotation I read from Mr. Belmont is not the one that is in quotation marks at all. The quotation I called his attention to is not the one that has quotation marks, and when he said the quotation marks were not made with his consent, I dropped that one. The one to which I called his attention has no quotation marks at all. It is the one which, avoiding quotation marks, construes my dispatch. He says:

“On the 16th of December Mr. Blaine wrote his last dispatch to South America, in which he says, in effect”—he gave it the construction—“in which he says in effect that there shall be no treaty of peace without a recognition of the Landreau claim.” There is no escaping by quotation marks there; there is no quotation marks to it. He gives the construction, and he gives an untruthful construction.

Mr. BELMONT. Now, this is the very last word that I am willing to give here. The words *in effect* mean just what they say: that that is the construction to be put upon that dispatch. But as to your reassertion about the character of my statement, as I have said just now, my course of action in that regard will be conveyed to you in private. I do not propose to make any scene here with you, or to make any capital one way or the other. You may do that, if you please. I think it is your method. I think that is what you are usually guilty of. I think you are a bully and a coward.

The CHAIRMAN [amid confusion]. This must not be allowed; it cannot be allowed.

The WITNESS. Mr. President, this man has disgraced his place; he is the organ of men who are behind him. He was put here to insult me; his mission was to do it. I beg to say that he cannot do it. It is not in Mr. Belmont's power to insult me! It is not in Mr. Belmont's power to insult me! He may say falsehood and bully and coward and all that, as much as he pleases. I recognize this, that he is speaking for men behind him.

Mr. BELMONT. What I say, Mr. Blaine, is entirely on my own responsibility, and I repeat, you shall, of course, very soon learn my method of dealing with this question and with you.

The CHAIRMAN. Let that conclude it. Mr. Wilson, please put your question.

Mr. WILSON. I have a very few questions which I desire to ask. I want to recur to this resolution, and ask you a few questions based upon it. I will read the resolution:

“Whereas it is alleged, in connection with the Chili-Peruvian correspondence recently and officially published upon the call of the two houses of Congress, that one or more ministers plenipotentiary of the United States were either personally interested or improperly connected with business transactions in which the intervention of this government was requested or expected,” &c.

I desire to ask whether you have any knowledge of any minister plenipotentiary of the United States being personally interested or improperly connected with business transactions in which the intervention of this government was requested or expected?

The WITNESS. None whatever.

Mr. ORTH. Let me suggest that you follow that up with the supplementary resolution.

Mr. WILSON. In reference to the Shipherd papers? [To the witness:] Have you any knowledge of any papers such as are referred to in the second resolution under which we are acting?

The WITNESS. Oh, no; none whatever; not the slightest.

By Mr. WILSON:

Q. Was there any purpose on your part, or on the part of the department while under your administration, to have any connection with the Crédit Industriel or the Peruvian Company?—A. None whatever.

Q. Had you any purpose, or was it the purpose of the department, to do anything more than had been done by your predecessor and by Congress touching the Landreau claim?—A. Nothing whatever.

Q. Was it the purpose of your department, the policy of your department, or its intention, to provoke, or in any way encourage, a war between this country and Chili?—A. On the contrary, the leading idea of President Garfield's administration about which any policy was evoked, and continued under President Arthur so long as I was Secretary of State, was solely and entirely in the interest of peace; and to that end, the idea (it having been discussed very fully before the assassination of the late President, and resumed under his successor) was to have a convocation of all the American powers to abolish war from the continent; to stop it absolutely. The policy of the department, so far as I had any power in shaping it, was, in every event and under all contingencies and between all peoples, to avert war, to make war impossible between American governments. To that end, during the last summer, the United States had a very happy experience in an intervention between the Argentine Republic and Chili. During the height of the Chili-Bolivian-Peruvian war, the Argentine Confederation and Chili came very near coming to open hostilities. The Osborns (as we call them in the department, Thomas O. and Thomas A., respectively ministers to Chili and Buenos Ayres) were instructed by the department to use their good offices, and they brought about a most happy reconciliation between those two powers; in every way happy. A minister, first special, and supplemented by another minister, came to this country and asked the intervention between Guatemala and Mexico. We offered to mediate, and did mediate, as the friend of both parties. I say this by way of illustration, to show that the entire spirit of the government was not for war, but it was for peace and for promoting peace; peace that was to make war impossible, and to make the law of arbitration everywhere dominant in the North and South American continent. I give you a comprehensive answer in regard to your question as to whether there was war meditated. There was never any such thing meditated.

Q. That peace policy was the policy of President Garfield; were you in accord with that policy?—A. I may say without egotism that I originated it, but it was completed under President Arthur. The invitation was sent out under President Arthur.

Q. I beg to ask whether you abandoned or departed from or changed that policy after the death of President Garfield while you had connection with the State Department?—A. Never. I stood by it to the end.

Q. Then, from first to last, this was thoroughly a peace policy?—A. I regarded it as such pre-eminently, and one to be conserved by every possible instrumentality that could be brought about to bring the nations of the North and South American continents into a league or union in the interests of peace, so that it would be impossible for them to go to war. I believed they needed it in a far greater degree than if they were dealing, as we are dealing, with an Anglo-Saxon population, because the Spanish population is hot-blooded, and when they are excited and get to fighting they do not know when to stop. The Anglo-Saxons know when a war is over; the races in Central and South America do not. That is of more special importance, owing to the ethnological peculiarities of the people in those countries. They are a proud, high-tempered, hot-tempered people. They are very ready to begin a fight, but slow to give up on either side; and that is what lends such terror and such horrible results to this Chili-Peruvian war. It is a war to the death, and it is a fight which will degenerate in time, and for years, I am afraid, into wandering guerrilla massacres. I thought for that reason it was of great importance to bring them into such a league as would submit all differences to arbitration.

Mr. KASSON. Before the committee adjourns I want to say one thing, only one thing, touching the colloquy, which we all regret, but which has taken place. I think I speak the sentiment of the committee as to the first origin of it, namely, that the committee did not understand the statement made (the construction put by Mr. Belmont upon the dispatch of Mr. Blaine, which Mr. Blaine declared to be untruthful) as anything else than another form of alleging, in very emphatic terms, that it was a positive misconstruction of the dispatch. At the beginning of the colloquy, I think we all agree that was our interpretation of it, and not a charge of falsehood, personally, against Mr. Belmont.

The WITNESS. I want to say that I said I would speak only in a parliamentary way. I was careful not to use an unparliamentary word. The word "untruthful" is not an unparliamentary word. I said it was an untruthful statement.

Mr. BELMONT. It is a dangerous word, Mr. Blaine.

The WITNESS. I still say that it is not unparliamentary.

Mr. KASSON. I wished to state that, as my apprehension of the understanding of the committee.

The CHAIRMAN. The Chair desires to state that he has exercised the utmost liberality, and I think the committee all regard the colloquy as unfortunate. But we can only appeal to the eminence, the discretion, the self-respect of the two gentlemen involved, and hope that a thing commencing in such a trivial way as this did, may not be carried to a dangerous result. [Laughter.] I make this remark, not intending, although it excites laughter, to reflect on either of the gentlemen, I assure you. Now,

is there any member of the committee who desires to interrogate Mr. Blaine further, after this session or does Mr. Blaine desire to make any supplemental statement?

The WITNESS. If the committee desire to see me any other day, or a series of days, I am perfectly willing. I ought to say here (and I am going to detain the committee long enough to let it go in the report) that there was a question I thought might be led up to but about which I have not been asked. I will detain the committee, with their permission, three or four minutes. The allegation has been made (and I speak now of allegations in the press), and made widely, that in my dispatch to General Hurlbut of November 26, which was testified to by his brother (and he read a letter from Stephen A. Hurlbut on that point), I had in that dispatch attempted to hedge; that meant a change of policy. Of course that had no relevancy when the further fact was developed that the policy was reaffirmed with even more confidence and strength in the subsequent dispatch to Mr. Trescot. That was no qualification. It was intended merely to check some overzeal on the part of Mr. Stephen A. Hurlbut. I regarded him as a man of extraordinary ability. He was a man of very great intelligence; he was a man of very great zeal, and his whole heart was in this question; his whole heart was enlisted with the Peruvian people and the Peruvian cause, more so indeed than was prudent for a minister representing a friendly country, a country friendly to both parties.

Indeed, he committed some imprudences. They were mere indiscretions; they did not in the remotest degree affect his honor or integrity; they were simply indiscretions. It was indiscreet in him to hold communication with the Chilean admiral; it was indiscreet in him to hold communication with the government of Piérola when he had been accredited to the government of Calderon; it was indiscreet in him to ask the Argentine Confederation to hurry up a minister to Peru; it was indiscreet in him to enter into negotiations for the transfer of any rights on Peruvian soil to the United States, which was done in the agreement made with him to cede to us the bay of Chimbote. All these things had a tendency to put the United States outside of the pale of friendly intervention.

If we were taking so decided and pronounced a course in favor of Peru and the Peruvian cause in our diplomacy as those steps involved, it was of course idle to attempt to have any hearing with Chili, and we were conducting ourselves with just as much friendship to Chili as to Peru. I sent down, therefore, a reprimand. I do not like to use so strong a word as that, for I wrote it in the most kindly frame of mind, and the words are not unkind at all. They contained all through expressions not only of official confidence, but of personal regard to General Hurlbut. General Kilpatrick, by his acts, which were of equal zeal for Chili (with which he had some personal connections), had also—they had both of them in a certain degree unfitted themselves to be intermediaries of acceptability to the other party, and had, by some little angry correspondence between themselves (or some, rather, from General Kilpatrick to General Hurlbut), hastened and precipitated that unfitness. That was the origin of the sending out of Mr. Trescot. I say this in justice to General Hurlbut. His whole course at Lima with reference to the claims, his whole course with reference to the United States' friendly disposition towards Peru, was discharged with integrity and with great zeal; and I say this all the more readily and all the more heartily, and with all the more good feeling, because of his death, which to me was a personal loss. I had a very great and kindly regard for General Hurlbut. I regarded him as a man of extraordinary ability—more than he had credit for, although all his acquaintances knew him to be a man of capacity. He was a very clear writer. I do not hesitate to say, even with the eminent men who represent this country in Europe in mind, that the United States had no representative abroad who wrote such clear and forcible, strong and elegant dispatches as General Hurlbut.

He was a man of fine education and had large and great breadth of information, and throughout the whole of his diplomatic course abroad he exhibited himself as a man of great force and ability. I only give these as the reasons for the letter of November 22, the writing of which was an essential thing to be done unless we intended to forfeit all our claim to good relationship with Chili in the matter. It was a necessity; it was the checking of overzeal in a good cause. It was, as the facts themselves show, no reflection upon General Hurlbut's official or personal character in the least, and I am sure that no sincerer regrets come from any one of his friends, and no sincerer mourner follows his remains to the grave than myself. I say this in justice to that minister.

Mr. KASSON. I move that the committee have the room for a few minutes for consultation.

The CHAIRMAN. The witness will be notified if the committee desire to call him.

The WITNESS. I would be very glad if I could be notified to-day.

The CHAIRMAN. It is not expected now that any further examination of Mr. Blaine will be necessary.

Mr. KASSON. I think there will be nothing that need detain him from any other engagement.

The WITNESS. I want to repeat, in conclusion, that as I offered myself in perfect good faith for any and every question that could possibly be propounded to me in connection with this investigation in all its length and breadth, its height and depth, its collaterals and contingencies, I am still subject to the wishes of the committee. I have nothing to withhold; I court the most careful and searching investigation into these matters, not only through questions that the committee may desire to put to me, but through questions that any and every citizen of the United States may desire to ask through members of the committee. If there is any chapter in my life (associated with a great man who has gone) of which I am proud, and of the complete and absolute vindication of which in history I feel sure, it is that in connection with the policy laid down by the administration of President Garfield with respect to the South American States.

The committee then adjourned.

WASHINGTON, D. C.,
May 1, 1882.

The committee met at 10 o'clock a. m.

The CHAIRMAN. The committee will please come to order. I will announce formally, so that it may appear in the record, that the subcommittee appointed to go to New York and take testimony under the order of the House will consist of Messrs. Kasson, Dunnell, Wilson, and Belmont.

Hon. HENRY W. BLAIR appeared, and was duly sworn.

By the CHAIRMAN:

Question. Please state if you know Mr. Joseph R. Shipherd, whose testimony has been taken in this investigation.—Answer. I do.

Q. Have you read his testimony?—A. I have; not thoroughly and carefully, but I have substantially.

Q. Without further preliminary questions, you will please state when you first knew Mr. Shipherd, what your relations with him and the Peruvian Company were, and all you know about the matters involved in this investigation, adopting such order of narrative as you may prefer.—A. Before answering that question, which seems to cover the whole case, I would like to read, and make a part of my own statement, the correspondence between the committee and myself. I will read first the letter from the committee, which is as follows:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, D. C., April 18, 1882.

DEAR SIR: I am directed by the Committee on Foreign Affairs of the House of Representatives to forward to you the inclosed copy of the printed testimony taken in the Chili-Peru investigation, and to respectfully inquire if you wish to be heard by the committee.

Should you so desire, and will be kind enough to inform me, such time will be named for the hearing as may best suit your convenience.

Very respectfully, yours,

C. G. WILLIAMS,
Chairman.

Hon. HENRY W. BLAIR,
U. S. Senate Chamber.

To this I replied, April 27, as follows:

UNITED STATES SENATE CHAMBER,
Washington, April 27, 1882.

MY DEAR SIR: Yours of the 18th instant, inclosing a copy of the testimony of Mr. Shipherd, so far as then taken, and inquiring whether I "wish to be heard by the committee," was duly received.

In reply, I desire to thank you for this courtesy, and to say that while I am not aware of any important fact which I can place in possession of the committee, yet if it is desired I shall be glad to answer any questions which it seems to me that I properly can.

To this end I have this morning obtained leave of the Senate to testify before your committee, and I will name next Monday morning as a time convenient to me, as until then I am pressed with other engagements. If any other and later time is more convenient to the committee I will hold myself in readiness to attend upon notice.

Very respectfully, yours,

H. W. BLAIR.

Hon. CHARLES G. WILLIAMS,
Chairman Committee on Foreign Affairs, House of Representatives.

[To follow Mr. Blaine's testimony of April 27, page 242.]

HOUSE OF REPRESENTATIVES,
Washington, D. C., April 28, 1882.

MY DEAR SIR: In the examination of yesterday, and the days immediately preceding, provocation so gross and persistent was offered to me by the witness testifying before your committee that I was led to use language which, although unparliamentary, did properly describe his conduct and my appreciation of his character.

The witness under examination had seen fit to criticize questions addressed by me on a former occasion to another witness, *first*, because quotation marks appeared in the printed record of such questions, the responsibility for which I disavowed, calling attention at the same time to the fact that the form of the questions negatived the idea that I was quoting from those dispatches; and, *secondly*, because of the interpretation placed by me on those dispatches. This was properly a matter for argument, and the witness had every opportunity to present and explain his construction of the dispatches signed by him. He chose, rather, to insist upon a change of my opinion respecting the meaning of the dispatches, and when I declined to make the change, my belief being positive and well-founded, he thought it proper on a public occasion to use language personally offensive. It was my desire and purpose yesterday to put an end to any further continuance of those personalities before the committee, and I therefore referred to a less public treatment thereof by myself. Having been surprised into making a reply, in the presence of the committee, of a character such as seems to my deliberate judgment would have been elsewhere, under the circumstances, entirely proper, and which expresses my opinion perfectly, nothing further in the nature of a private or personal notice of the witness is required of me.

These unparliamentary personalities should have no place on the records of the committee, and I cheerfully leave the method of dealing with them to the direction of your body.

Very truly, yours,

PERRY BELMONT.

Hon. CHARLES G. WILLIAMS,
Chairman of the House Committee on Foreign Affairs.

Please let me know the time fixed upon as soon as convenient.

I now submit a copy of the resolution introduced by myself and passed by the Senate, as follows:

In the Senate of the United States, April 27, 1882.

Resolved, That Henry W. Blair, a member of the Senate, have leave to testify before the Committee of the House of Representatives on Foreign Affairs, in the Chili-Peruvian investigation now being made by that committee.

Attest:

F. E. SHOBER,
Acting Secretary.

In reply to my letter, I have this from the chairman:

HOUSE OF REPRESENTATIVES, UNITED STATES,
Washington, D. C., April 29, 1882.

MY DEAR SIR: I have the honor to be in receipt of yours of the 27th instant, signifying your willingness to appear before the Committee on Foreign Affairs and make a statement with reference to the Chili-Peru investigation at such time as may be agreeable to the committee not earlier than Monday next. On consultation with the committee, I am directed to say that if agreeable to you it will be their pleasure to hear you on Monday next at 10 o'clock a. m.

I am, very respectfully, yours,

C. G. WILLIAMS.

Hon. H. W. BLAIR.

The WITNESS. I have somewhat hurriedly prepared a written statement covering, in a general way, the scope of inquiries which I suppose the committee would like to propound to me. I will read this statement, and then shall be glad to submit to any questioning that the committee may see fit.

Mr. BLOUNT. Before the statement is read, I would like to make this suggestion. In the communication from Mr. Blair to the committee, just read, he says: "I shall be glad to answer any questions which it seems to me that I properly can." I now understand him to submit himself unqualifiedly to the committee for such questions as they see fit to ask.

The WITNESS. I expect to be questioned by the committee as they may see fit, and I expect to answer those questions as I think I ought to.

Mr. KASSON. I would suggest that the matter as to the propriety of the question can be settled at the time when the question is put.

Mr. BLOUNT. I think it might as well be settled now.

The WITNESS. I do not say that there are any I should refuse to answer; of course, I do not know what questions may be propounded to me.

Mr. BLOUNT. I wanted to understand in what sense the words were used. I inferred from the letter that there was a line beyond which the Senator did not care to have inquiries go, and I wanted to know how far he submitted himself to the committee.

The WITNESS. I think the committee will be satisfied; my statement is a tolerably full one. I do not wish it to be understood that I come here desiring to make any reservation which, in the judgment of the committee, or that of any professional man, I ought not to make.

The CHAIRMAN. I thought I would put a few formal preliminary questions, and then allow the witness to make his statement in his own way. After he has concluded, members of the committee will be at liberty to interrogate him.

Mr. BLOUNT. I simply thought before the statement was begun, having noticed that expression in the letter, that I would like to know what was meant by it, because, to be frank, I did not care to examine at all if the examination was to be restricted to the wish of the witness. I do not so understand it now.

Mr. KASSON. I supposed, myself, that it referred to what was equally binding on the committee and the witness, namely, what was pertinent to the inquiry we are conducting.

The WITNESS. As the subject-matter of your investigation has been referred to the Senate Committee upon Foreign Relations, I have felt some embarrassment in regard to the course I ought to pursue as to appearing before you, and from the beginning I have recognized the fact that silence until properly called upon is always the right course for a witness to pursue.

I know nothing of the membership of the Peruvian Company except the president. Mr. Shipherd, nor do I know anything proving or tending to prove that any person connected with any department of the government now has or has hitherto had any

interest in or connection with said company or the management of its affairs except the same be as counsel; and, so far as I know, I am the only member of either house of Congress who has been connected with or interested in said company at all at any time, in any manner or capacity, nor have I any knowledge of any fact not already in possession of the committee, so far as I can recall or believe, which could throw further light upon its investigations. While there is in my belief no reason for my appearance before your committee as a witness, I thank you for the opportunity which your invitation affords me to say that my own connection with the whole matter was based upon considerations, so far as I know the motives which actuated me, compared with which any possible private gain was without influence upon my action, and that my connection with the company was not such as to give me much, if any, knowledge of its personnel, its organization, or internal management.

I have long believed that the result of the war between Chili and Peru was intimately connected with the political and commercial interests of our own country, and, in fact, with both North and South America. Chili is substantially a European, if not a British province. Peru is the key to the whole Pacific coast of South America, and, in a military point of view, as well as in whatever relates to trade, commerce, and civil and political institutions, in the years to come whatever powerful people dominates Peru will dominate that continent. Holding both slopes of the Andes, and the sources of the navigable river systems of all that lies east of that great range of mountains, with railroad communications, guarded by impregnable fastnesses, connecting the Pacific Ocean with her eastern possessions, by virtue of her climate, resources, and geographical position, the power that holds Peru, wherever it may itself reside, will control the fate of South America. It should be remembered that these South American countries are still in the cradle of nations. I say nothing here of our responsibilities for their existence and protection from each other, or from European force. Consider now our own situation with reference to that Isthmian communication which involves the peace and fate of nations more than any other one international question of our time. The Saint Lawrence River, the line of the lakes, two thousand miles of unprotected frontier, a transcontinental railroad rapidly being constructed, and British Columbia on the Pacific coast, with a hardy northern population and mighty resources of attack and defense, lie north of us, and in possession of the enemies of our supremacy. England, France, and Spain blockade the Mississippi River, and hang on the flank of our commercial and naval marine crossing the Isthmus outward or homeward bound, while every fleet of Europe can strike us, in ten days, from the ports of that continent. Nations weaker, and liable, from jealousy, if not interest, at any time to become allies of foreign powers, hold all land approaches and the *locus* itself.

One end of a ship-canal or of a ship-railroad is of little use without the other, and the accordant action of the dominant powers of South America with ourselves is essential to American control of the transportation across the isthmus which connects us together like the Siamese twins.

MR. LORD. If the witness will allow me to interrupt him a single moment, I would like to inquire whether this statement directly connects itself with the inquiry before the committee?

THE WITNESS. Yes, in a preliminary way; I must speak of the motive which actuates me. You will find very soon that the statement connects itself with that.

MR. LORD. I should like to see its connection with the inquiry before us, for our time is somewhat limited.

THE WITNESS. My time is not altogether unengaged either.

THE CHAIRMAN. The witness will please proceed.

THE WITNESS. Hence I have long considered the Peruvian question as the canal question, and the absorption of Peru by Chili, which now seems likely to be accomplished, as the establishment of European control over the isthmus, unless hereafter we wrench it from our own great rivals by destructive wars. Entertaining these views, and for other reasons, prior to the death of President Garfield, I urged the calling of an extra session of Congress both upon the Executive and his cabinet and from my seat in the Senate, to consider this and other important public affairs, but without avail. Late in the month of June, like many other public men, I received through the mail a copy of the prospectus of the Peruvian Company. Glancing at what seemed to me its preposterous amounts and values I threw it away. While on my way from Washington to New Hampshire, the last day of June or the first of July, to the best of my knowledge, stopping over for a day on business in New York, gentlemen in whom I have great confidence called my attention to the matter, and one of them introduced me to Mr. Shipherd. The interview was brief and unimportant. Somewhat past the middle of July I was again in New York, had a long conference with Mr. Shipherd, was informed by him that many capitalists were interested in his project, that the representatives of Peru in this country were exceedingly anxious for his success as the only possible source of relief to their conquered and distracted country—and the humanitarian side of the question was pressing indeed—and my assistance in bringing the matter to the attention of the Secretary of State was solicited. I readily agreed to do this and to

aid in any way that I could, declining, however, any compensation as attorney. I said to Mr. Shipherd that he had a right to the attention of the government, and that I should prefer to arrange an interview between himself and the Secretary, as the matter appeared to be of such magnitude, that with so little knowledge of it I should not care to undertake its full presentation. I ought, perhaps, to say that Mr. Shipherd had fortified his own views by legal opinions, one of which was in writing and was shown to me. On such examination as I could make it seemed to me that, although the claims were enormous yet that there was justice at the bottom of them, and so I now believe, and that Peru, even in her extremity, for the sake of the relief which would come from the payment of a war indemnity to Chili, the guarantee of her foreign indebtedness, and the integrity of her financial situation, until she could rally and again become prosperous, could well afford to agree with an American company to pay a small part, say five or ten per cent., or from \$50,000,000 to \$100,000,000 of these claims, and that her extraordinary resources should be pledged, and their occupation transferred temporarily to secure repayment for advances. I do not think that Mr. Shipherd—certainly I did not—ever supposed that Peru was to engage payment of the full amount of the Landreau and Cochet claims. A lawyer usually declares for enough, and a party settles for what he can get of an insolvent debtor, whatever may be the nominal or even the just amount of his claims. Peru was not only conquered, but was being massacred, and although she had untold wealth and resources, her dismemberment and destruction were imminent. England was taking possession of the South American Pacific Coast as much as she already possesses the South African Coast, and with infinite danger to our future interests. We were practically warning away all other sources of relief to Peru, yet violating the highest obligations of international law by permitting a nation, helpless and unresisting, absolutely in the jaws of her conqueror, to be utterly destroyed before our eyes when we could save her by a word. The government would guarantee no indemnity—Chili would not wait. The administration and Congress had concurred in the postponement of all public questions, the President was mortally hurt, and the future was uncertain.

Calderon had been recognized, and I understood that his agents were eagerly anxious for the adoption of Mr. Shipherd's plans. At that time it was a well understood fact that the wish of the United States would be law to both Chili and Peru. If the government should express the desire that Peru be allowed a reasonable time to procure and pay a just pecuniary indemnity for the damages suffered by Chili in the prosecution of the war, Mr. Shipherd supposed he could readily obtain the consent of Peru to his arrangement, and upon the strength of that agreement organize his syndicate into a company and prosecute the enterprise to a successful termination. He assured me that he had the strongest reasons to believe from the statements of agents of Peru with whom he was in communication, and who were familiar with his whole plan, that it would be at once agreed to by that power, at least in such form as to constitute an ample basis for the organization of his proposed company; and such was the urgency of affairs between Chili and Peru that it was supposed that if our government should take the position which it turned out had already been fixed in the instructions of June 15, the whole negotiation would be concluded by commissioners who would go at once to Peru, and that during the season indemnity to Chili would be provided for, and Peru evacuated by the Chilean forces, and that no further action in the premises by any department of our government would be required.

I saw Mr. Blaine, to whom the matter appeared to be a new one, at Washington, and stated it in brief, and he at once assented to the interview which took place, as stated in testimony already before you, on the 25th and 26th of July. It turned out that the policy of the government had already been fixed, and corresponding instructions, given to Mr. Hurlbut, dated, if I remember aright, June 15. I saw no reason to suppose that Mr. Shipherd's project had anything to do with fixing and influencing the international policy of the government, nor, so far as I know, was that policy ever changed or modified by reason of the existence of that project, nor at all, so long as Mr. Blaine remained Secretary of State.

The dispatch of August 4 from the State Department, having reference to the Landreau and Cochet claims, was, I suppose, the result of these interviews in July. Mr. Shipherd desiring that I should aid him actively as counsel, I considered the matter, consulted with gentlemen whose sense of professional and senatorial propriety is as acute and correct as that of any men who ever belonged to the bar or Senate of this or of any other country, and decided to take a retainer, but with the distinct reservation that I should cease to have any interest whatever if I thought that any Congressional action might become probable upon the claims or upon international affairs which I might think inconsistent with my relations to the company. The Landreau case was the one to aid which the government seemed to be clearly under obligations to give its good offices. That had been adjudicated by Congress, and there was no occasion for its further interference. The Cochet claim it was proposed to adjust directly between agents or commissioners of the company and Peru. That being done, no question could arise as to the liability of Peru to require action by Congress or by the State

Department, unless in the future the company should become entitled to the good offices of the government, like other American citizens. Even if both claims were to come before Congress for action, and I were their owner myself, I believed that I should be situated no worse (in fact, less objectionably) than owners of stock in banks, railroads, and other enterprises which are affected by legislation, and who, when their interests are affected, can refrain from taking part in such special legislation. Besides, Secretaries of the Treasury who have millions invested in the import trade to-day are nominated by the President and confirmed by the Senate, and then divest themselves of all interest in the vast affairs and accumulations of a lifetime at an hour's notice, and, by a stroke of the pen, qualify under the law. These were in no sense claims against the government or people of the United States. Nothing was proposed to me but that I should render service in the matter of a private claim against a foreign government, surrounded, as it was, by such important considerations pertaining to the welfare of our own country, of Peru, and of mankind, all of which would be promoted by the proposed prosecution of the claims. Can no citizen hold legislative office, and yet seek to enforce his claim against a foreign government through the authorities of his own? Were owners of the French spoliation claims, for instance, while those claims were still pending against France, disqualified from holding legislative office, because entitled to the interference of the government to enforce their rights? It does not follow that they should vote on what affects their own interests if the question should arise. The relation of counsel is still more remote than that of a party. Yet Congress has its full share of men whose all is wrapped up in general, and sometimes in special, legislation which they control. Men are often elected for the very reason that they are personally so much interested in the subject-matter upon which they are to legislate. Senators appoint judges of the Supreme Court and try them when accused by the House. The ablest and best men in both branches practice the law before this august tribunal, the individual members of which they thus create, accuse, and acquit or condemn. It is so in every State. It is so in England. It is so everywhere. But no further or different action by the State Department was needed. The ground it had taken covered the whole case. Still further, these claims, utilized by an American company or like agencies, were essential to the success of the international policy outlined by the government. How else was Peru to get the money to pay the indemnity? The result is the best answer. This project, for the time, has failed, and, as a consequence, Chili has taken, and means to hold, everything from Peru which was covered even by the broadest assertions of these claims, and her independence, apparently, besides. Meanwhile, the United States is the subject of jibe from a little but plucky nation of less than two millions of people; and the foreign press of this country, and European capital, too, as I believe, are busy trying to ruin the credit of these claims against Peru, even to the extent to which they are just and should be paid, because (it may be) of a fear that they will yet become the subject of national action, while the good name of every public man who has tried to see them made available for purposes of great public concern is deemed the legitimate prey of obloquy and abuse.

Having decided that I would accept a retainer, Mr. Shipherd informed me that he should address me a business proposition (without intimating its nature), and some time in August he wrote me, offering as a retainer a part of the stock of the company when it should be formed. I did not, to my recollection, definitely reply to this, but some time later I saw him and I told him I preferred a retainer in money, if I was to have one at all; and he said I could have either, but paid me none, and thus the matter dropped. Both of us, however, understood that I was employed as counsel, subject to the reservation already named.

Some time in October I received by mail a certificate of scrip.

The first part of November (I believe the third day) Mr. Shipherd was at Washington, and I told him I had decided not to accept any retainer, and that I should return the scrip. I was still as anxious as ever, however, for his success, and urged him to send his commissioners to Peru, as I had constantly from the first. But this was never done to my knowledge. Time passed on, and the 25th of November I returned the scrip with an indorsement—"declined and cancelled," and signed by myself. I have never received anything from the Peruvian Company, nor in consequence of my connection with it, but a liberal amount of gratuitous advertising through the newspapers.

The following is the only letter I ever wrote Mr. Shipherd, of which I retained a copy:

"U. S. SENATE CHAMBER,
"Washington, November 25, 1881.

"MY DEAR SIR: Herewith I return the certificate of stock, or organization scrip No. 13, in the Peruvian Company, dated October 1, 1881, as the course of events tends more and more in the direction of possible action by Congress upon questions arising between the country and the South American States. While there is no substantial

reason why I should not own property in a foreign country, or be interested in a company which has such property, still I would not feel right to speak or vote upon a question which might involve peace or war, the lives and property of others, and the honor of the country, while I myself should have a personal interest in the result, however remote.

"As you will remember, I originally said to you that if the matter ever seemed likely to require or to involve action by Congress, I should divest myself of all personal interest, and that whatever I might do should be with that understanding. In the great considerations concerning liberty, civilization, and the prosperity and happiness of both continents, which are involved in the present condition of South American affairs, I am profoundly interested. They have been thus far with me the controlling motive. Upon them I shall continue to act, and shall do so all the more freely because I shall be conscious that my action has no taint of personal interest in the result.

"Very truly, yours,

"H. W. BLAIR."

At the same time I wrote the following to Hon. W. W. Eaton, the only "counsel" of Mr. Shipherd with whom I ever exchanged a word in regard to his case, except it be Hon. A. H. Cragin:

"U. S. SENATE CHAMBER,
"Washington, November 26, 1881.

"Hon. W. W. EATON:

"MY DEAR SIR: Mr. Shipherd's management of the affairs of the Peruvian Company seems to me to be tending so much in a direction which may require Congressional action, either directly upon his claims or upon international questions, the decision of which will have an important bearing upon the interests of the company, that I have thought it best that I should cease to have any connection with the company, either as counsel or otherwise. I have accordingly so informed Mr. S., and write you this, because, having first brought the matter to your attention, it has seemed proper that I should acquaint you with my action.

"I have never received, nor do I expect to, anything of value from the company, and a certificate for a certain amount of the stock sent to me I have declined, cancelled, and returned. Properly conducted, I believe this juncture of affairs and Mr. Shipherd's claims afford one of the grandest opportunities for doing good to both continents that has ever been presented, and I am very sorry that I am not able to be connected actively with the enterprise.

"Truly, yours,

"H. W. BLAIR."

Mr. RICE. What is the date of that?

The WITNESS. November 26. In this copy, as it passes to the reporter, I will call the attention of the committee to the fact that here are four lines erased. They allude to a conversation which I had with Mr. Eaton when I first saw him, in which I spoke to him of the fact that I was, or was thinking of becoming, actively, counsel in the case. These lines I erased because I knew the interview would be in his mind; there was no occasion to remind him of it. The words are: "And consulted with you then as to whether there was any impropriety in my connection with the case." And I may say to the committee, in connection with this, that I did so consult with him, and that his reply to me was with reference to their being any impropriety in my acting as counsel; that there was not, in his belief, the slightest in the world. Mr. Eaton, as is well known, was chairman of the Senate Committee on Foreign Relations in the Forty-sixth Congress. I shall be glad, if the committee shall see fit to call Mr. Eaton before them, if they will inquire of him in this regard.

I also wrote one other letter, of which the following is a copy. The blanks I do not fill, because I do not know whether the person addressed ever became counsel or not. The name is a good one. There is no occasion to divulge it. The gentleman had no connection whatever with the government:

"WASHINGTON, D. C., November 25, 1881.

"MY DEAR SIR: Having called your attention to the Peruvian Company, at the request of Mr. Shipherd, I wish now to say that I have no longer any interest in the company, either as counsel or otherwise. In fact I have never received anything of value from it.

"The recent management of Mr. Shipherd's matters and the course of events lead me to apprehend that action by Congress, either upon his claims or on international questions that may affect them, may be necessary, in which case I should feel embarrassed if any relation of a pecuniary nature existed between me and the company. I should be sorry if this opportunity to help both North and South America should fail to be properly improved.

"Very respectfully, yours,

"H. W. BLAIR."

I do not care to go over the particulars of the several interviews testified to before the committee by Mr. Shipherd and Mr. Blaine, unless desired to, further than to observe that I heard nothing said of the offer of stock or improper inducement of any kind to Mr. Hurlbut. Nor have I any remembrance that I at any time heard of it until last December, when Mr. Blaine showed me the letter of June 2, which Mr. Hurlbut had sent to him from Lima. Other letters had been sent by Mr. Hurlbut at the same time, but I did not examine them. I have no knowledge or belief that any dispatches or instructions were ever sent or given to Mr. Hurlbut other than, or different from, those already made public. I first became aware that Mr. Shipherd had used extracts from my letters to him, in correspondence with Mr. Hurlbut, last January, when I received the following from Mr. Hurlbut himself. The postmark shows that it passed through the Washington office January 17, 1882:

“LIMA, PERU, December 21, 1881.

“MY DEAR SIR: I have received a great deal of correspondence from Mr. J. R. Shipherd, in which he mentions your name frequently.

“I cannot succeed in making Mr. Shipherd understand that I cannot touch his case except it be referred to me by the State Department. I do not believe there is anything in it; but at all events it must come [the two last words being doubly underscored] to me from the department. I fancy that I have succeeded in getting into pretty hot water in relation to affairs down here; but I accept it. You will find, if you choose to read my dispatches, what my views are.

“If the United States shall not be disposed to adopt and maintain them I can be of no use here, and am ready to take the usual mode of *congé* by a leave of absence and proffer of resignation at the end of the leave.

“On principle and in heart I am rather an intense American, and do not believe in the United States playing second fiddle to anybody. If this feeling does not appertain to the new chief, there will be discord, and they had best send some man of more pliable mold and more patience at kicks.

“The seizure of Calderon is a direct insult to the United States.

“Will our leaders never learn the intense nationality of our people, and that no decent assertion of our dignity will ever fail to meet response from the country?

“I shall expect to be relieved with the change of authorities to be expected, but want to be relieved decently.

“Yours, very truly,

“S. A. HURLBUT.

“Hon. H. W. BLAIR.”

I began a reply to that letter, but it occurring to me that Mr. Hurlbut would probably leave Lima before my letter could reach him, I abandoned it, a circumstance which I now much regret. A kindly word might have saved his life. No communication ever went from me to Mr. Hurlbut while he was our minister to Peru. I never shared in the conviction of others that Mr. Hurlbut was not upright in his official actions.

I have here such portion of my imperfect reply as I prepared to send, but as it was never completed and never sent, I suppose it is entirely immaterial. I will read the only sentence that could seem to do me any mischief.

Mr. KASSON. I agree so decidedly with the first statement of the Senator, that what never went out of his possession is immaterial, that I do not think it is necessary to read it.

The WITNESS. I knew of the letter sent by Mr. Shipherd, or by Mr. Camacho (by whom written I do not know), through Mr. Hurlbut, to Mr. Arizola. After it was sent I think that some of it was read to me by Mr. Shipherd, but I am not sure. I had nothing to do with its preparation. As I supposed, Mr. Hurlbut had talked over the affairs of Peru and this project with Mr. Shipherd before he left the country in June; and still another interview had been anticipated by Mr. Shipherd (as he informed me), at which Mr. Shipherd had expected to place more fully proofs of his claims and details of his plans in Mr. Hurlbut's hands, that he might better understand how to conduct affairs when he got to his post of duty. And, as it was suspected that the regular mails were tampered with by the Chilians, it never occurred to me that there was any impropriety in Mr. Shipherd's sending the letters in the way he did. It concerned only a private claim of American citizens, and, in my opinion, in no way comes within the statute forbidding private persons interfering with the diplomatic matters of foreign governments. It must be that an American citizen has a right to dun a king for his dues, and I see no reason why he may not do it in person or by letter transmitted through the good offices of the American legation. Whether there was any fault in this regard or not, I feel sure that Mr. Shipherd did not intend any. Besides, the minister delivered the letter, and he must have been the best judge of the propriety of his own act.

I first knew the contents of the long letter of August 9, to Mr. Walker Blaine, when

it was published during the examination of Mr. Shipherd by your committee, although I have an impression that Mr. Blaine at one time desired me to say to Mr. Shipherd that he preferred to communicate with him only through me, and that I repeated this to Mr. Shipherd. I did not know of the existence of any of the letters containing extracts from my own until last January, nor of their contents until they were published by the department. As to the extracts from my letters to Mr. Shipherd, and by him sent to Mr. Hurlbut, I have this to say: that I wrote to Mr. Shipherd with the more earnestness because I believed that all was likely to be lost unless he acted quickly. Peru could not be saved without the aid of money, and there was no way to get it, apparent, if he failed. I knew nothing of the Credit Industriel project at all, except that there was talk of it; but of its contract with Calderon, which seems to have existed as long ago as March previous, and of its character, capacity, and responsibility I knew nothing. He claimed to have the capitalists, but an agreement by Peru, recognizing and settling some definite indebtedness, and pledging her resources, was necessary as the basis of their proposed advances, to pay or secure the Chilean indemnity, foreign debt, and home expenditures. The letter of Mr. Shipherd to Mr. Hurlbut, of October 27, in which I am quoted as saying that Mr. Shipherd "should act as though the American ships of war were on their way to the Pacific coast," "the policy of the government has been exactly right, and is now," &c., was written to induce Mr. Shipherd to send his commissioners, upon which everything, as I thought, depended. The act of Chili in suppressing Calderon's authority had naturally stirred the State Department, and while I did not know, or claim to know its secrets, and did not try to find them out, except as Mr. Blaine personally chose to inform me, I had been enlightened sufficiently to feel sure that the government had spirit enough to recognize a kick, and to resent it. I believed that possibly envoys or government ships, or both, would go to South America. Great Britain has a powerful fleet there now. It was pre-eminently an opportunity to be improved by Mr. Shipherd, and I tried to have him make the effort.

November 15, 1881, Mr. Shipherd writes to the minister: "Senator Blair writes me Hurlbut telegraphs that the Chileans have captured Calderon and carried him to Chili. There must be trouble now. Have General Grant do his duty. American influence in America is at an end, if Chili can slap our face as flatly as this." Since that last sentence was written the international sneers and giggling with which our policy has been saluted have demonstrated its truth. I did suppose there would be trouble—not war, which I did not then conceive to be probable—when Chili kidnapped Calderon, for no other reason, as I believed, than that his authority had been generally acknowledged throughout Peru, thanks to the efforts of General Hurlbut and the pressure of our mild but firm and just policy of demanding for Peru a *chance* before she should be dismembered, and because Chili, or rather our European rivals, saw the coveted opportunity to deal our influence a fatal blow was slipping away. I thought that the government would resolutely demand the restoration of Calderon, and I believed, that if demanded it would be done.

I believed that General Grant was strongly supporting Mr. Shipherd's enterprise for public reasons and without pecuniary interest. I understood that his opinion was quite potential among the men Mr. Shipherd relied upon to furnish the money for the Chilean indemnity, and I believed, too, that his advice to the administration, if desired, would be such as the national honor and interests required. I regret the form of the expression, for General Grant never needed any stimulus to perform his "duty"; but I did not write for publication, and I was trying to impress my sense of the urgency of immediate action in making his agreement with Peru upon Mr. Shipherd.

With regard to the letter of November 26, 1881, in which Mr. Shipherd says of his interview with the President upon the introduction of General Grant, that, "while properly reticent, he was evidently impressed," and "Senator Blair, General Grant, Governor Boutwell, and others will follow it up," it is enough to say that I had then ceased my connection with the company, and that I never at any time mentioned the Peruvian Company or Mr. Shipherd to the President.

To the statement made to the committee that I told Mr. Shipherd to quote the Secretary much stronger than his own words, &c., I wish to observe that I do not recall such expressions, and that whatever form of language I adopted could have been used only to convey the impression that the department was decided in adherence to its general policy as indicated in its instructions to Mr. Hurlbut, and that gentlemen who might be disposed to associate in the company said to be organizing, could safely rely upon the stability of the policy of the department. In this sense, no doubt, I expressed myself, for I so believed. It did not occur to me that anything I might thus say would be communicated to the agents of the department itself, who were all the time in direct communication with it, and not likely to be influenced by anything I might write to a client. I do not think of any other points in this case which call for notice on my part—although I have not been able to fully examine the voluminous testimony before the committee—or in regard to which I have knowledge which can aid the committee.

I will merely say in addition that my own confidence was based more upon my conception of what our own interests and destiny demanded than on Mr. Shipherd or any one company or association of men. I could not conceive of a policy of American debasement and abnegation. That men who were in a position to know much better than I believed in the solidity and good faith of Mr. Shipherd's enterprise, whatever they may have thought of his management of it, is evident from the counsel and associates around him in the city of New York, with the capitalists and local influences of which I am unacquainted; and it is my own belief *now* that, notwithstanding what seemed to me to have been needless delays and inefficiency in action, if the attitude of our government had remained unchanged an American company would have been formed which would have relieved Peru and changed the current of commercial interests, and thus indirectly of political predominance, from European to North American shores, and once there they would have remained there for ages to come. As late as the middle of November the State Department supposed the Peruvian Company to be composed "of reputable gentlemen," and General Grant introduced its president to the American Executive, as I had four months earlier to the Secretary of State. Mr. Shipherd's matters were lying around pretty loosely; but there were the elements of success in the situation, and in time his, or some American, association would have achieved it.

Mr. Shipherd's conceptions were not confined merely to trade and pecuniary advantage. He had larger and more important views as well, of which it is useless now to speak.

History has made record of such corporations as the Peruvian Company might have been, which have played influential parts in the improvement of the human race; but whatever may have been accomplished by such corporations in the past, there was never a more important exigency or a better opportunity to have wrought out something for the good of the nations than was and perhaps still is presented by the South Pacific situation.

I should further observe that after the seizure of Calderon, of which I learned about the 10th of November, I became more and more impressed with the belief that Chili was supported by European influences, and that those influences had determined upon the present emergency as a favorable opportunity to attempt to entrench themselves in the permanent possession of the western coast of South America with a view to the control of the Isthmus of Darien as well as of the valuable commerce of those countries which the restoration of Peru by American aid would secure to the United States.

And this conviction has grown constantly stronger until now I believe that an injury has been done which, unless repaired by an immediate and emphatic change of the apparent policy of the last few months, will result in the permanent abandonment of the traditions of American international policy, the reversal of the Monroe doctrine, and the perpetual subjection of the United States to limitations imposed by European interests allied with the small, but jealous, and henceforth hostile powers which, until now, have looked upon us as their chief benefactor, their natural leader, and indispensable friend. I cannot believe that the country or its administration—an administration of whose foreign as well as domestic policy I desire to be an ardent supporter—will consent to lose this great opportunity, however it may have been apparently jeopardized by the recent course of events.

I am now ready for such more specific examination as the committee desires.

The CHAIRMAN. The hour of the session of the House has arrived, and I will submit to the committee the question whether we shall go on, or adjourn until to-morrow.

Mr. BLOUNT. I think we had better adjourn. The statement made by the witness is very elaborate, and I would like to examine it more carefully after it is printed.

The CHAIRMAN. It seems to be the opinion of the committee that we now adjourn subject to the call of the chairman.

The committee then adjourned.

WASHINGTON, D. C., May 4, 1882.

The committee met at 10 o'clock a. m.

Hon. HENRY W. BLAIR appeared, and his testimony was resumed.

The CHAIRMAN. If Mr. Blair is ready I will put a few general questions to him, and then will call upon the members of the committee to examine as they may desire. [To the witness] I understood you to testify, Mr. Blair, that you were more interested in the South American policy of the United States and the importance of Peru in its defensive location in the case of a foreign war than actuated by any pecuniary interest?—A. That is a part of the idea I designed to express. I do not know to what extent the committee care for my views any further than they bear upon the motives under which I have acted hitherto, or did act at that time. I designed to convey the impression that I looked upon Peru as the key to South America; that she had a pop-

ulation and a territory full of resources and possibilities; that I looked upon this and the existing opportunity also (for I do not think it has passed away) as one of those great opportunities that come in the progress of history to nations when by perfectly peaceful and judicious and proper methods one nation may extend its influence and may found or build up for itself allies in the future, and do for itself and for mankind what there might never have been an opportunity to accomplish if that be neglected.

Q. If you will allow me, it was not my purpose to go over the ground again, but I desired to follow my first question with this: When was your mind first drawn to that view of the subject—to the strategic importance of Peru in case of a foreign war with the United States?—A. Very early. I have always understood it so since my mind has been directed to contests in South America.

Q. When did you first become active in view of that; in other words, I understand you felt you were actuated more by the importance of Peru as a defensive-auxiliary to the United States in case of a foreign war, than by any pecuniary interest which you had in the Peruvian Company. Now, when did you first take an active part in that direction?—A. The question of transit across the isthmus is one, of course, that I have been interested in, like other public men, for a long time. I have looked upon this as auxiliary to that, and bearing upon it. It was in my mind as early as the extra session of the Senate, that is, after the inauguration of President Garfield, when I made an effort, upon that and other grounds, to secure an extra session of Congress.

Q. Will you please state the other grounds?—A. There were various measures. I looked upon the operations of Lesseps and other movements in the direction of the construction of the canal, and the construction of railways across the isthmus, as very important. I was not alone in that. I considered that there were other great questions before the country which required an extra session of Congress. The tariff question, I thought, at the initiation of the administration, ought at once to be taken in hand, that it might be dealt with wisely and understandingly, and disposed of during the present Congress. And the same with reference to the modification of the business of the Supreme Court; and there were other questions that seemed to me important.

Q. With reference to the inter-oceanic canal and these South American republics, what did you think ought to be done at that special session?—A. I do not know that I could say what special measure I would have recommended, other than the strongest assertion of what is popularly, for the want of a better definition, known as the Monroe doctrine. I would have given notice to the world that no foreign power and no foreign corporation, unless with an express understanding of the political control and supremacy of the United States over the work when done, should be permitted to make connection between the two oceans. I would have done that, and I would have, perhaps, done other things. I would have done what I could to encourage the construction of such water or railway connection (or both) by the capital and by the influence of citizens of the United States. I believed in North and South America for North and South America, and I believed in the United States as the leading power of the two continents. We have 50,000,000 of people and all the rest have 45,000,000 of people, and I believed it very important to protect these interests and these institutions. I believe providence has designed this country to take the leadership and control of these continents, if not of mankind. It has seemed to me for a long time that these questions were important, and that this was an era of a new departure in our foreign affairs, when we ought to have a more aggressive, or, at least, a more outspoken and pronounced foreign policy.

Mr. WILSON. Pronounced to the world?

The WITNESS. Yes, pronounced to the world.

By the CHAIRMAN:

Q. In preserving the independence of Peru, was it your idea that the United States should colonize it, if necessary, to preserve its independence?—A. Just what the United States ought to do, what specific measures she ought to undertake, I never formulated in my own mind; but I have thought this, that she should certainly go to the verge of international law to preserve the territorial integrity of Peru, and to prevent the diminution, certainly, of her territory and of her material and political consequence in the interest of European powers; the success of Chili being, as I have always looked upon it, the success, really, of Europe; and as far as that is concerned, I have considered it as going just so far in the direction of the subjection of the United States and of a strictly American policy to the interests of a foreign, or of a European, policy.

Q. Did you regard Chili as less friendly to the United States than Peru?—A. I regarded the increase of her political and material consequence as less favorable to the influence of the United States than that of Peru.

Q. In case of a foreign war which would you have regarded as of the greater importance in a defensive point of view, Peru or Chili?—A. I should look upon Peru; the possession and control of Peru, with anything like an equal development of local population and resources, as of almost infinitely—well of vastly more—importance than Chil

in the same regard. I do not suppose that Peru, without some opportunity at least for development and discipline, is so powerful a nation to-day as Chili. Had she received from other powers the same assistance and accretion of help that I think Chili has received from European powers, I have no doubt that Peru to-day would be the much more important nation. I am not talking of the next five or ten years; nations live hundreds and thousands of years, of course. But her geographical location upon the South American continent, her possessing some four or five times as much territorial expanse and very much greater natural resources in all respects, makes the alliance and friendship of Peru in the future, I think, of very much greater consequence to the United States than that of Chili.

Q. In defending the western entrance to the inter-oceanic canal, in a strategic point of view, which would you regard as of the greater importance, the occupation of Peru or Nicaragua, to the United States?—A. I have never contemplated the occupation of Peru by the United States as an independent power. I have supposed—I am wandering from your question, perhaps.

Q. I mean as a basis for defensive purposes, which would you regard as the most important of those two republics?—A. I should regard the alliance of Peru as of very much greater importance, because Peru is capable of developing into a very much greater power. It is a healthy country, comparatively. She can maintain a population of thirty millions of people. She had ten millions, I believe, when invaded by Spain. She has a territory of 600,000 square miles; she is three times larger than France; she has greater natural resources than France, I think. There is no reason why she should not, considering her climate and location, develop into a nation of many millions; while Nicaragua, on the other hand, although nearest to the canal, is in a hot, unhealthy location. A vigorous army from the north, or from the corresponding locations in South America—that is, from Peru and from Chili—would be likely to be decimated. It would be difficult to maintain troops there, and if there is fighting for the canal, it will be fighting upon the sea rather than upon the land. I think fleets will hold the canal and the railroad, and not armies.

Q. How do you regard the western coast of Nicaragua as to health and climate?—A. I suppose it to be less healthy and less desirable for occupation than Peru; but I do not know that any question of the right or opportunity of the United States to obtain practical possession of, or very friendly alliance with, Nicaragua has occurred.

Q. I was only speaking of the comparative importance of the two.—A. Do you ask my impression in regard to that? Both, undoubtedly, would be important; but the large nations and the important localities necessarily will dominate the inferior ones. I think Peru, with as much enlargement as would inevitably come to her if she should be made, as she might be, a leading South American power—I think the natural enlargement of Peru with the natural enlargement of the United States would carry along inevitably the subservience—not in any offensive sense, but the practical alliance of the smaller powers of Central America.

Q. I understood you to say that your first interview with Mr. Shipherd was in New York the last of June or the first of July?—A. Yes, sir.

Q. Will you please state where that took place?—A. It was in Mr. Shipherd's office, at No. 10 Spruce street.

Q. How was your attention first drawn to Mr. Shipherd, or the Peruvian Company, and by whom?—A. Mr. Cragin was the first gentleman who ever mentioned the matter to me.

Q. You say this was a brief interview?—A. Yes, sir; very brief.

Q. Will you please state the substance of it?—A. Well, it was, as I said in my direct examination, both brief and unimportant. My family was with me; I was on my way home; and I had other business in New York—business with Mr. Cragin. He had learned in regard to this company, and had had interviews with Mr. Shipherd, as he told me, and he said that Mr. Shipherd desired to secure my services; that he thought that he wished to introduce the matter to the Secretary of State; and that he would like to have me go with him, or that Mr. Shipherd would like to have me go with him, (I don't recollect which, perhaps both), to Mr. Shipherd's office that I might confer with him a moment. I was in haste; I had but little time. I went to him and was introduced to him.

Q. What desire did Mr. Shipherd communicate to you in that interview?—A. To the best of my recollection all that was said at that interview, aside from the introduction and a little chat of an ordinary character, was that he would like to see me at a later time with reference to my aiding in the object that I have just mentioned; his calling the attention of the Secretary of State or the State Department to the Peruvian Company and its purposes in South America. There may have been other conversation, but that is the substance of it. That is all, I think, that has any bearing upon the matter.

Q. What was your response in substance?—A. I do not know but what he gave me at that time (I presume he did, though I am not sure) the pamphlets which were circulating; I am not sure in regard to that, but I think he did. I do not know but

what he said something about desiring I should look them over with reference to a future interview. What was your question?

Q. My question was, what response did you make to his request?—A. I indicated a willingness to see him later—at some later time; I do not remember in just what form it was done.

Q. That is not material. Was this the first time that your attention had been called specially to the merits of the Peruvian Company?—A. Yes, sir; the first of which I have any shadow of recollection at all. As I stated the other day (on Monday), I received (I do not know just how long it was, but two or three weeks, or perhaps a month earlier), through the mail, the pamphlet of the company, and, as I said, glanced at its amounts and values, and it seemed to me an exceedingly wild sort of thing, and I threw it away; I never paid any attention to it.

Q. Then about the middle of July, on your return, you had a longer interview with Mr. Shipherd?—A. I did.

Mr. WILSON. I should like to see if the witness can identify this as the pamphlet referred to (handing the pamphlet, entitled "Truth Demonstrated," to the witness).

The WITNESS. I should not think that was the pamphlet. I do not remember, but it seems to me it was the prospectus of the Peruvian Company that he handed me.

Mr. BLOUNT. You are referring to the prospectus then?

The WITNESS. My recollection is that it was entitled the "Prospectus" of the Peruvian Company.

By the CHAIRMAN:

Q. Where was this second interview?—A. At his office.

Q. Are you able to fix the date any more definitely than the middle of July?—A. While I cannot fix the exact date, I think it was a little later than the middle of July. If I was to fix the date the nearest that I can, without being sure, I should say about the 20th.

Mr. WALKER. Is this the pamphlet that Mr. Shipherd handed you? It is the official announcement of the Peruvian Company (handing the pamphlet to the witness).

The WITNESS. That does not look like the paper. No, I do not think it is. There may have been more than one pamphlet; I cannot say.

Mr. RICE. That is a later issue of the company?

By the CHAIRMAN:

Q. Were there any other persons except you and Mr. Shipherd at this interview?—A. I do not know. It seems to me that Mr. Cragin went in with me and went away. But our principal conversation was between ourselves.

Q. Will you please give as fully and circumstantially as you can the details of that interview or the substance of it; what Mr. Shipherd said and desired, and what you replied to him?—A. Mr. Shipherd has stated very fully in regard to the interview in his testimony.

Q. It is for the purpose of comparing your testimony with his statement that I desire to have you state.—A. I do not think it is possible for me to give any interview—any protracted interview—with that affluence of statement and apparent accuracy of dialogue that Mr. Shipherd does. I shall not undertake it. I can tell you the substance.

Q. That is what we desire.—A. Mr. Shipherd explained substantially, as you find in his printed testimony, the purposes of his company. He stated to me a large number of names, some of which I had heard of, but many of which I never had heard of, as among the leading capitalists and business men of New York, and, I think, one or two in Chicago. I think he mentioned Field, Leiter & Co., of Chicago, as parties that were interested in the matter.

Q. Can you give those names now?—A. There is a list of them in the letter to General Hurlbut, I observed. I observed there many of the names which I recognized as having been mentioned to me, and there are many names there that I do not recognize. But the substance of it is that he mentioned—

By Mr. BLOUNT:

Q. Are these the names you refer to (calling the witness's attention to Ex. Doc. 68, part 2, H. R., 47th Cong., 1st sess., p. 16)?—A. These are the names I refer to as mentioned in the letter to General Hurlbut, and a part of which I recognize as having been mentioned to me at that time. I remember the name of Morgan, of Dodge, and, I think, of McCulloch; Vanderbilt also, but not as a man with whom he had any definite relations, however, but as a capitalist that he supposed would become interested. I should think Jay Cooke and Morton, Bliss & Co. were mentioned, and I think he mentioned Claflin—I feel quite sure he mentioned Claflin—and I think that Seligman was mentioned also, and I should think Caswell besides. Many of these names I do not recognize. The substance of it was that there were plenty of substantial men and a large amount of capital ready to embark in this undertaking; men

interested in the commerce of the country, and interested in the welfare of the country, from whom would be likely to be constituted a very strong and powerful company.

By the CHAIRMAN:

Q. Which claim did this refer to?—A. Both claims were mentioned. I understood him that, practically, he had the management and control of both.

Q. That is, of the Cochet and the Landreau claims?—A. Yes, sir; the Cochet and the Landreau claims. There was the most conversation in regard to the Cochet claims.

Q. Well, what further was said?—A. The matter was discussed quite largely with reference to other considerations than merely commercial ones. I think that, as far as I was concerned, the most of the conversation that I had, and the inquiries and the suggestions and the comments that I made, were with reference to its importance internationally. I understood that Peru must have help from somewhere; that she was conquered and entirely unable to make her resources available. Foreign countries were not in a situation to assist her against the inertia, at least, of our government; I mean to say that our government did not exhibit any very active design to assist her, as far as I know. I thought that the company could be made use of to furnish Peru the money to pay Chili, and to rid her soil of her invaders, and to assist her also in recovering her self-control and prosperity.

Q. Did you think that could be done without these claims, one or both of them, as a basis of negotiations?—A. I do not want to be understood as saying that I do not think it could have been done; I do not want it understood that I thought it would not have been done in some way. But I did not think it was likely to be done through this agency, which seemed to me to be the only tangible agency, unless these claims or some of them could be made a basis of negotiations.

Q. What was your idea at that time as to whether these negotiations on the part of the United States, between Chili and Peru, could be made effective without the use of one or both of these claims as a basis of negotiations?—A. I did not understand there were negotiations between the United States and Chili or Peru at that time. I understood the situation as I tried to state it: that Chili was in occupation of Peru; that Peru had no executive, that is, no united executive; that she had no army, that she had no navy, and that she had no treasury; and that she was absolutely a conquered power, and that social ties, as well as national ties, and the relations between the citizen and the national power, were substantially dissolved. That was her condition at that time as I understood it. I understood, or supposed, the position of our government to be that of warning away other powers from active interference such as was intended. I supposed Chili could be properly settled with by a pecuniary indemnity. I did not understand that she made any pretense that hers was a war of conquest for the annexation of territory.

Q. Did you understand this to be the case (if you will allow me right there to summarize what you have said), that it was desirable to enable Peru to raise the Chilean indemnity, and to procure the evacuation of Peru by the Chilean forces?—A. I so understood.

Q. Was it your opinion, then, that that could only be made effective by the use of one or both of these claims?—A. I did not know of any other way in which it could be done.

Q. And it was your purpose to aid in accomplishing that result?—A. It was.

Q. That is all I wanted to know. Now, I wish you would please be a little definite about this, and state to the committee just what Mr. Shipherd wanted you to do; what he required your services for specially, if for anything.—A. Mr. Shipherd wanted me to examine his papers and his case. He made a specific statement that what he wanted most of all was to ascertain the attitude which the government occupied towards Chili and Peru, and the policy which it was proposed to pursue for the future. That was essential for him to know, as the basis of any operations of a commercial or business nature that might be undertaken by his proposed company.

Q. How did he desire you to obtain that knowledge?—A. He desired me to see the Secretary of State and learn it from him, and I told him (as I said in my main statement) that I would be very glad to do that; that it was knowledge that I thought he had a right to have, and I had no doubt it would be readily communicated if the State Department understood, or could see, as they could from his statement, that it might be very important and proper knowledge to be communicated.

Q. Did he state to you, or did you ascertain in this interview, what attorneys had examined the title of the Cochet claim?—A. Governor Boutwell, he informed me, had, and I think he produced Governor Boutwell's written opinion; at all events, he said that he had it, and he showed it to me either then or at a later time.

By Mr. RICE:

Q. Governor Boutwell was the person to whom you referred in your direct examination as the attorney whose opinion he showed you?—A. Yes, sir; as to other counsel at that time I do not remember. I think he mentioned having consulted others, but

it was Governor Boutwell who made a careful examination of all his papers and had given him a written opinion upon which he relied.

By the CHAIRMAN:

Q. Then, at that time, he seemed to have no doubt as to the validity of the Cochet claim?—A. Not the slightest; not the slightest. I do not think he ever broached the question of the justice or the legitimacy of his title to the claim.

Q. Then in this interview did he propose to retain you to examine the validity of this claim; was there any such proposition from Mr. Shipherd to you?—A. He desired me to examine his papers and to let him know what I thought in regard to it. The specific thing that he most desired was what I have told you.

Q. To communicate with the State Department?—A. The important thing for them to know, the initial thing, really, for them to know, having satisfied themselves that they had a good claim, was whether, as American citizens having organized a company and made a contract with the Peruvians, and become interested in Peruvian soil and property, their interests being abroad, whether the policy of the government would be such that they would be safe in the prosecution of their anticipated design.

Q. Did he in this interview explain to you his interest in the Landreau claim?—A. I do not think he did. All I understood, and all I have ever understood, in regard to the Landreau claim was that it was, by some understanding or arrangement with those who had the legal title, under his control for practical management as well as the Cochet claim. I do not mean to be understood as saying that I understood the title to the Cochet claim to be vested in him personally, but it was more intimately connected with him than the Landreau claim.

Q. Did he represent it to be vested in the Peruvian Company?—A. There was no company.

Q. Did he refer to any Peruvian Company at that time in any way?—A. His prospectus of the Peruvian Company had been in my hands before that time. All the company that I understood from his conversation there was, was this association or collection of gentlemen with whom he was in relations with reference to the claim; but just what those relations were I did not know. I supposed it was a sort of syndicate, or list of gentlemen who had an understanding among themselves that they would take this up if they found that they could safely go on with it as a commercial enterprise.

Q. It was a proposition, then, to form a company in the future?—A. Yes, sir; that is what it was.

Q. Did you understand from him what amount of capital the company would expect to raise in order to indemnify Chili?—A. In regard to that I cannot say that I understood from him what amount of capital they would expect to raise. But I understood from him, or from other sources, that the Chilians fixed their indemnity at some \$30,000,000 or \$35,000,000. I supposed (this is supposition, of course) the whole thing was tentative. I supposed if the Chilians went off they would get all they could, and very likely a company would have to provide for a larger amount.

Q. What did you understand the value of the Cochet claim to be estimated at at this time?—A. His estimate was what appears in his prospectus.

Q. You spoke, I think, the other day of Peru being able to pay 5 per cent., or \$50,000,000 or \$100,000,000?—A. I spoke of Peru as, in my belief, being able to pay or able to pledge her resources to secure the payment of some reasonable sum, and I said 5 or 10 per cent.; \$50,000,000 or \$100,000,000. The claim was about \$1,000,000,000, I believe. I did not think it would be any hardship on Peru, with her great resources, to pledge the amount. But whatever actual value was to be finally realized from either claim I always considered must depend upon subsequent agreements with Peru herself, and the actual pledge of her resources to secure payment.

Q. You understood the policy of the government in regard to Peru and Chili to have been fixed before the interview of July 25?—A. I say that I so understand now, and for a considerable time have so understood. I have so understood ever since I learned what the instructions were, of June 15, to General Hurlbut, and the instructions, I think of the same date, to General Kilpatrick. I did not know what those instructions were until subsequent to July 25.

Q. Now, coming to the interview of July 25, I believe you say that was in the evening, at Mr. Blaine's house?—A. There were two interviews or partial interviews making up the entire interview. A comparatively brief one, as I recollect, took place on the evening of July 25. I would state in regard to the length of the interviews—

Q. I was coming to that; I do not like to prolong my examination. I would like to have you take these interviews in their order, state where they occurred, who was present, and what, in substance, was said at those interviews, as you recollect them, of the 25th and the 26th.—A. As I stated, I was in New York perhaps on the 20th. I came to Washington to see Mr. Blaine, explained something of this matter, and said to him that I had been requested to see him personally with reference to it, but that I did not

care to take the responsibility of transmitting the views of the department to Mr. Shipherd, or whatever gentlemen might be associated with him; that I looked upon it as too important an affair, and that I would be glad if he would see Mr. Shipherd himself; and he expressed the utmost readiness and willingness to do so. I informed Mr. Shipherd, either by post or by telegraph, I do not remember which, and he came to Washington. We went to Mr. Blaine's the evening of July 25; that is, I assume it was the 25th, because that is the date fixed here, and it must have been about that time. Mr. Blaine as I recollect it, was fully engaged with company, and we waited a considerable time. When he had a chance to see us, we had a comparatively brief interview. I presume we may have talked with him perhaps half an hour; I do not know but what we talked with him longer than that, and then he excused himself, either because it was getting late or because he had to go to the President, or for some reason, and we were invited to come in the next morning, and we did so.

Q. Who was present at this interview?—A. The first interview in the evening I recollect no parties but myself, Mr. Shipherd, and Mr. Blaine.

Q. Where were you?—A. We were in Mr. Blaine's parlor, in what I should call the middle one of those connecting rooms; as I recollect it, the second one from the street, back, with the folding doors dividing them.

Q. About how long did the interview continue?—A. I have not that kind of memory which enables me to swear, to a minute, but I think it was about half an hour that we talked; it may have been an hour. But I should think we chatted there about half an hour.

Q. And in that interview you three talked in common?—A. Yes, sir; so far as I know, nothing was said by any one that was not heard by all. Of course, it is possible (no man can say positively about a thing of that sort) that it may not have been so, but it is my belief that it was as I have stated.

Q. We do not assume that the conversation could be given literally. Now, will you please give to the committee, as nearly as you can recollect, the substance of that conversation during the interview?

The WITNESS. You mean in the evening?

The CHAIRMAN. Yes, in order to separate these interviews and keep them distinct.

A. I do not know whether I can separate the subject matter of the first or the evening interview, from that of the next morning's interview. But Mr. Shipherd stated, in a general way, what his company was, and stated something of the men who were associated with him. He mentioned various names to Mr. Blaine and spoke about these claims. Both of the claims were mentioned, and their nature, and the use the company desired to make of them was stated, and that it was important for them—indispensable for them—to know, if they were to go on, what would be the probable policy which the government would pursue toward Chili and Peru; that if the government was to let Chili, willingly, without any expression of its wish, take the territory of Peru, of course there was nothing for any American company to undertake; but if the government designed that the territory of Peru should only be taken as a last resort, and designed to ask of Chili that she should take territory only after a reasonable opportunity being afforded Peru to pay the indemnity and she had failed to furnish pecuniary indemnity; if the government, I say, proposed to take that position, why then there was an opportunity for an American company to utilize these claims by an agreement with Peru which would render the amount definite, and the security definite, and Chili might be paid her money, and the whole matter might be worked out in accordance with the commercial interests of our own people, and of this company, and the commercial and political interests of the country at large. They wanted to know what attitude the government proposed to occupy upon that South American question.

Q. What was Mr. Blaine's response?—A. In regard to the claims themselves? Mr. Blaine seemed to know something about the Landreau claim. I do not know but what he mentioned having known of it while he was in Congress; I cannot say whether he did or not. The Cochet claim being explained to him (and I do not know but what I am running into the interview of the next morning now), he raised some questions in regard to it.

Mr. LORD. Do you regard the interview of the 25th in the evening, and the 26th in the morning, as the same, substantially?

The WITNESS. They are the same, but I have been trying to make an effort to separate what occurred in the evening from what occurred in the morning. In the evening I am confident that the same subject-matter was mentioned, but not at so great length, and was nothing like so fully discussed as it was the next morning.

By the CHAIRMAN:

Q. Now, coming to the interview of the next morning, where did that occur, and who was present?—A. That occurred at the same place.

Q. In the same room?—A. I believe so; I will not say. That was a longer interview, and I do not know but what part of the time we were in one room and part of

the time in another room, and I do not know but what part of the time we were separated.

Q. That is immaterial; but who was present at that interview?—A. Nobody was present at that interview excepting we three that I recollect. Nobody took part in it excepting, I remember, Mr. Walker Blaine was there for a while, and he joined in the argument upon one question that was raised for a time.

Q. Was that interview continued by you three in common, the same as the interview of the night before?—A. Yes, sir.

By Mr. BLOUNT:

Q. I understood you to state that part of the time you were together and part of the time you might have been separated?—A. I say part of the time we might have been separated; I do not remember that we were. But we were there, I should think, more than an hour the next morning, and nobody but we three were present that I recollect—nobody certainly took part in the interview, only for a brief period when Mr. Walker Blaine was there, and, so far as I know or remember, the interview was in common.

Q. I want to get your idea about the separation. Do you mean that some other business, with some other person, might have intervened and broken off the conversation?—A. I think there was something of that kind. I mean to say that I think Mr. Blaine had other callers. But the time was given substantially to us. He might have stepped from the room, or something of that kind, for a moment.

By the CHAIRMAN:

Q. But so far as this interview was concerned, it was conducted by him with you two?—A. Yes, sir.

By Mr. RICE:

Q. Did you or Mr. Shipherd at that time have any conversation with him at which the other was not present; did you and Mr. Shipherd separate?—A. That is what I do not know. I have no recollection that we did. I think it would be quite extraordinary if a man could say, at the end of this length of time, that he was personally actually present and heard every word or did not hear every word that was said. I have no recollection of our being separated.

By the CHAIRMAN:

Q. Now, you may give the substance of that interview.—A. The substance of it was a discussion, and a pretty thorough discussion, of the Cochet claim, in which Mr. Shipherd explained his views in regard to it, and stated the views of his counsel, Governor Boutwell, who had examined the matter. Mr. Blaine made the point that it was a claim originating between the Peruvian Government and a French citizen, and that upon Mr. Shipherd's own statement of it, it came through a French citizen to a Peruvian, and his assignment was from a Peruvian, so that, as Mr. Blaine claimed, Mr. Shipherd, or those who were interested with him, could have no rights that the Peruvian would not have in the same claim, and that the Peruvian could have no rights to American protection or countenance, in any regard whatever. Upon that point I remember that Mr. Walker Blaine joined in the discussion, sustaining the view which his father took. Mr. Shipherd controverted that, and also placed his claim principally upon the ground that the title was not to a right in action, but it was to actual property and to a portion of the soil of Peru—the real estate of Peru—and standing upon that ground, and that his rights (and I think Mr. Blaine substantially seemed to concede that, if that were the case) were practically the same as though they had originated between Peru and an American citizen. I know that this view occurred to me as probably the correct view. I do not know whether it has ever been suggested by Governor Boutwell, or by anybody, but I know that these allusions seemed to me as probably the correct view to take of a claim such as Mr. Blaine understood the Cochet claim to be. The citizen unquestionably has the right to acquire the title to a claim against a foreign government; and it must, it seems to me, be a question addressed to the discretion of the government whether, under all the circumstances that surround the case of a private and of a public, of a national and of an international character, it is right and judicious to countenance the claim and to interfere, or not to interfere, by good offices, or in a more substantial way give its support. I think it is a question addressed to the discretion of a government always, and would be in such a case as that. I do not know whether that is sound international law, but it seems to me it must be.

Q. As the result of that interview what did Mr. Blaine say?—A. As the result of that interview I think Mr. Blaine explained the instructions; I think he explained them verbally, and I do not know but he read to us from them. I will not say in regard to that at this time, but I think he communicated to us the instructions he had

given to General Hurlbut and to General Kilpatrick, which instructions were all that Mr. Shipherd, as he expressed himself, had any desire for whatever.

Mr. WILSON. Just repeat that if you please.

The WITNESS. Those instructions, whether communicated at that time, as I think they were, in substance (I mean as contained in the letters of June 15 to the two ministers), were all that Mr. Shipherd desired. He had the understanding, and I suppose the world had the understanding, that the express desire of the United States would be made, by Peru and Chili both, the basis of their negotiations. If the United States desired, and should express the desire, that Chili should accept a pecuniary indemnity, she would do so. She had expressed that desire, and having done so, and the probability of that policy being permanent, there was nothing in the way of Mr. Shipherd's sending his representatives to Peru and making a definite agreement with Peru as to the amount of these claims that should be recognized, and arranging for an assignment, or hypothecation, or pledge in whatever form made, of the resources of Peru to secure the payment of these claims, or whatever should be allowed upon them or agreed upon in regard to them, and such advances as Peru necessarily must have, including, of course, this indemnity and some provision for her foreign debt and for the running expenses of her government.

By the CHAIRMAN:

Q. Did Mr. Blaine indicate what the department would do in the future in regard to either of these claims?

A. Nothing that I recollect, further than that he would examine them. He seemed quite clear, from the previous history of the Landreau claim, that there was not much doubt that it was one entitled, or that the American owners, at least, of it, were entitled, to the good offices of the government in securing a hearing and adjudication by the tribunals of Peru. In regard to the Cochet claim, as I said to you, he aimed his blows directly at any title or right that the owners of that claim might have to recognition in any form by the American Government; because it was an assignment from a foreigner to an American citizen.

By Mr. WILSON:

Q. In that connection Mr. Shipherd, as I understand it, gave Mr. Blaine to understand that he had control of the Landreau claim; am I correct in that?

A. Yes. I do not mean that he owned it, but I understood that for the purposes of effecting this adjustment with Peru, he had the management of this claim as well as the Cochet claim; and he also claimed further that the Cochet claim had priority by reason of the services of Cochet having been rendered earlier than those of Landreau, and that it stood in the same relation to the Landreau claim that a prior agreement does to a subsequent one, and must be so dealt with in equity, or in any agreement or adjudication made with reference to them. So that without agreement with the Landreau owners, practically the Cochet claim would control it. But I understood that there was a communication or understanding between him and the Landreau owners, or some of them at least, so that he practically controlled the two.

By Mr. BELMONT:

Q. How do you explain the letter of Mr. Christy, which was read by Mr. Blaine the other day?—A. I do not recollect what the letter was.

Q. The letter in which he says that he was the attorney of the Landreau claim, and nobody else had the right to represent him?—A. I do not undertake to explain it; I simply explain what I know. I do not know Mr. Christy; I never heard of him, that I know of, until that letter came out, which I do, now, recollect.

By the CHAIRMAN:

Q. In either of these interviews was any reference made to the letter of June 2, to General Hurlbut, proposing to give him an interest in the company of \$250,000?—A. No, there was not. I never heard of that letter until about the 4th or 5th of December. I was at Mr. Blaine's house one evening and he was writing; there was a pile of what appeared to be letters before him, and the top one he pushed to me and told me to read it, and it was this letter. I had no knowledge of the letter before.

Q. Do you think if there had been any such conversation that evening or that morning you would have been likely to have heard it?—A. I think so; yes, sir.

The CHAIRMAN. There were other questions that I had intended to put, but I see that our time is passing rapidly and I will surrender the witness to any other member of the committee who desires to examine him.

Mr. BLOUNT. I hope the committee will adjourn now, for the session of the House has already commenced.

The CHAIRMAN. I will abide by the wish of the committee in that regard.

The WITNESS. It will not be convenient for me to have my time broken in upon too long, though I wish, personally, to do anything I can to accommodate the committee.

The CHAIRMAN. Would it be convenient for you to resume your examination this afternoon?

The WITNESS. I have a session of the Senate to attend, and I have other engagements this afternoon and evening. I could go on till noon, because the sessions of the Senate do not begin till twelve o'clock.

The CHAIRMAN. The committee hope to be able to complete the examination this week—either to-morrow or next day, and as the Senator has other engagements I think upon the whole we will adjourn this hearing until ten o'clock to-morrow morning.

The committee then adjourned.

WASHINGTON, D. C., *May 5, 1882.*

The committee met at 10 o'clock a. m.

Hon. HENRY W. BLAIR appeared, and his examination was resumed.

By Mr. BLOUNT:

Q. What was the amount of the certificate of stock sent you by Mr. Shipherd in the way of a retainer?

The WITNESS. Do you think that is essential to the investigation?

Mr. BLOUNT. Well, I will simply ask it.

A. I decline to state the amount; I do not wish to state the amount. I have stated all in relation to my connection with the company as counsel, showing that I was counsel, that I thought was at all pertinent to the matter, and I do not care to go further than the public interest requires in that direction.

Q. Were any of your expenses of any sort paid?—A. Nothing was ever paid me; I received nothing but what I have stated to the committee; no money but a certificate of stock.

Q. You had your first interview with Mr. Shipherd, when? I mean the meeting when you were first introduced by Mr. Cragin.—A. That was on my return to New Hampshire, about the last of June or the first of July; I think it must have been the last of June. That is immaterial, however.

Q. You had a second interview about the middle of July?—A. A little later than that.

Q. At what time?—A. As near as I can fix the date, it was the 20th or 21st of July.

Q. Then the subject of the interest of the company was somewhat discussed, was it?—A. Yes, sir.

Q. At that time the prospectus was handed to you for examination?—A. The prospectus was handed to me at my first interview. One had been sent to me previously, as I stated, which went for nothing.

Q. Was there anything said in the first interview about a fee?—A. I do not remember that there was or that there was not.

Q. Was there anything said in the second interview?—A. There was then, in regard to my becoming counsel.

Q. That was after you had examined the prospectus, I suppose?—A. Somewhat; I had looked at it, but not carefully. During this interval I had glanced at it and had some knowledge of it. But, as you remember, it is quite an elaborate document, and I had not studied it much, if any. I had not given my days and my nights to it by any means.

Q. Did you agree in that interview about a fee?—A. I did not.

Q. What was the date of that second interview, as near as you can state?—A. The date of the second interview was about the 20th of July.

Q. Was there a proposition at that time for you to take a fee?—A. Yes, sir; that I should become counsel for the company and should serve it for hire.

Q. Was there any declination at that time?—A. I told Mr. Shipherd very much the same as he has stated, only not in quite so strong terms, but I think in substance the same, that I did not wish to be connected with it until I knew more about it, and in no event, if it was likely to be or seemed to me that it could be a matter that the legislative department of the government might have something to do with.

Q. How long after that was it before you agreed to take a fee?—A. I do not know it was some time in August (the early part of August) that I informed him that I would serve the company as counsel. At that time there was no statement in regard to the matter of a fee, the amount or what the fee was to be; it was simply that I would act as counsel, and he understood that what I did from the beginning was in the relation of attorney to client; that I had declined to serve him for hire until I knew more about it. I had said to him that anything that I could do to help the matter along I should be very glad to do, and I should have done anything that I did then or at any subsequent time, I think, just as quickly without as with a fee, except that I would not have examined his papers, of course, minutely.

Q. What was the date of the first interview with Mr. Blaine—with Mr. Shipherd and Mr. Blaine?—A. The 25th of July.

Q. And the 26th also?—A. Yes; the 25th and the 26th.

Q. Mr. Blaine says, on page 190 of the testimony: "Mr. Shipherd came and stated to me that he was the representative of a very important claim against Peru, known as the Cochet claim, of which, up to that time, I had never heard. I did not know the name, and asked him how it was spelled. I suppose it is a French word from its sound, but I did not know the spelling of it, even, and had never heard the word in my life before. He went on to state that it was a very important matter. He stated, generally, that it belonged to the Peruvian Company; that he was its general agent; that Senator Blair was one of the active counsel; that ex-Senator Boutwell (whose opinion he had in his pocket and offered to show me) was one of the active counsel." And below that I asked: "Was that the first interview?—A. I think the very first. I thought it was a very formidable array of counsel, I remember." Is Mr. Blaine correct in saying that Mr. Shipherd in that very first interview said that you were one of his active counsel?—A. I do not remember expressions. I was there with Mr. Shipherd, and Mr. Blaine understood I was there as counsel. In regard to—

Q. I would be glad to know whether Mr. Shipherd made that statement which gave Mr. Blaine that view at that interview, that you were one of the active counsel?—A. I cannot say as to the expression.

Q. Did he convey that idea to the Secretary of State?—A. I cannot say whether he conveyed the idea or not. The fact was patent and there was no dispute in regard to it. I do not claim to remember all the expressions that were used at any of these interviews. But I was going on to state that he did mention Mr. Boutwell as one of his counsel, spoke of having his opinion, and I think drew the paper from his pocket as though he was about to present it, and read it. I recollect he spoke of having it. In regard to the other counsel mentioned, Mr. Lord, I think—and who else is mentioned there by Mr. Blaine?

Mr. BLOUNT. Mr. Blaine states as follows: "Ex-Senator Eaton, of Connecticut, and ex-Senator Conkling, of New York, were also his counsel; that Mr. Scott Lord was one of his counsel, and I think he stated (I am not sure that he mentioned that) the name of Judge Robertson; I think he added Judge Robertson, but I am sure he added the name of ex-Senator Cragin, of New Hampshire."

The WITNESS. I remember Mr. Boutwell, and I think Mr. Cragin, being mentioned at that time, but I do not remember Mr. Conkling nor Mr. Eaton's name being mentioned at that time. I think Mr. Blaine has those names confused; though he may have stated them to him at a subsequent time.

Q. Mr. Blaine understood that you were there as counsel, did he?—A. I have no doubt he did.

Q. Why do you think he supposed you were there as counsel?—A. I had, as you will remember, seen Mr. Blaine and arranged the interview, and I had explained to him what had passed between myself and Mr. Shipherd, and I had said to him that Mr. Shipherd desired me to act as counsel in the matter, and that I had declined to have any relation of a pecuniary character between us until I knew more about the matter, and, at the same time, I was desirous of aiding him. I asked Mr. Blaine if he thought from his knowledge of the matter and the proprieties of the affair there was anything wrong in my being counsel, or any impropriety in my being so, and he said he could not see any.

Q. That was before this interview?—A. That was at the time when I arranged the interview between Mr. Shipherd and Mr. Blaine for the 25th.

Q. You conferred with him, then, as to the propriety of your acting as counsel?—A. I spoke to him of it the first time I saw him. I told him about the affair in New York, which was a new and somewhat strange development to me, of amounts and all that, and in a brief way the nature of what I understood the claim to be, and the way it was likely to be enforced, if at all.

Q. Did Mr. Blaine say that he thought there was no impropriety in your being counsel?—A. I understood him so. I am sure that nobody ever intimated to me in any way the idea that there was any impropriety until this investigation began to develop.

Q. But did the public understand your connection with it?—A. A good many persons have understood my connection with it. All the counsel in the case I suppose knew that I was connected with it; the Secretary of State knew it, and I never concealed it from anybody; I have never had any disposition to do so, and I have not now. I have nothing in that direction to apologize for; I should do the same thing right over again under the same circumstances and under the same light and with the same objects.

Q. What is the objection, then, to letting us know the amount of scrip that Mr. Shipherd sent to you?

The WITNESS. Of what consequence is it to the committee or to the country?

Mr. BLOUNT. Well, I am not here to argue the matter; if you decline to answer, it is sufficient.

The WITNESS. Neither am I here to decline to answer if I thought it was a matter that was within the legitimate scope of what may be required of a witness.

Mr. BLOUNT. It was for this very reason, Mr. Chairman, that I asked in the outset of the examination whether the witness would commit himself to the examination of the committee or not. I think it very material that Mr. Blair should answer the question; I want to say that here; and why I think so it is not necessary for me to state, for I do not propose to show what use I am going to make of it.

The CHAIRMAN. I suppose that if Mr. Blount wishes the question to be disposed of at this time it will be proper for the committee to go into executive session to determine that.

Mr. BLOUNT. I will pass it for the present. I understand the situation. I want to ask it, however, and let the witness refuse to answer if he thinks proper.

By Mr. BLOUNT:

Q. You have stated in your testimony that about the 1st of November you said to Mr. Shipherd that you would decline to take a retainer, did you not?—A. I said that, I think, on the 3d, or early in November. It was at the time when Mr. Shipherd came to Washington, and during the time when that interview occurred which he has testified to.

Q. In your letter of November 25, 1881, to Mr. Shipherd, in describing the scrip, you say: "Herewith I return the certificate of stock, or organization scrip No. 13, in the Peruvian Company, dated October 1, 1881, as the course of events tends more and more in the direction of possible action by Congress upon questions arising between this country and the South American States." That stock, it appears, was dated October 1, 1881. Did it come to you by due course of mail after that; did it appear to have been mailed of that date, and come to you by due course of mail?—A. It was later in the month that I received it.

Q. What time?—A. It was about the middle of the month.

Q. It was about the 15th?—A. It was some time, perhaps, between the 10th and the 15th; earlier, I should say, rather than later than the middle.

Q. In Washington, then, about the 3d of November, after having had it more than two weeks, you notified Mr. Shipherd that you would return the stock or scrip?—A. I did. I notified him that I could not serve him any longer in the relation of paid counsel. My letter shows that I still sympathized with the purposes of the company.

Q. I do not care to go into that; we will come to that part after awhile. Now, notwithstanding that while here you did not deliver it up, but, on November 26, three weeks afterwards, you wrote three letters, one of them to Mr. Shipherd, from which I have just been quoting, and the second one to Mr. Eaton, of the same date, in which you say: "I have never received, nor do I expect to, anything of value from the company, and a certificate for a certain amount of the stock sent to me I have declined, canceled, and returned. Properly conducted, I believe this juncture of affairs and Mr. Shipherd's claims afford one of the grandest opportunities for doing good to both continents that has ever been presented, and I am very sorry that I am not able to be connected actively with the enterprise." Did you mean to make the impression by your language on Mr. Eaton, with whom you had once conferred as to whether you should take a fee, that you never had this scrip nor any other thing, and never had received it and never expected anything of value from the company; that your services had been given without compensation or expectation of it?

The WITNESS. Is that the question?

Mr. BLOUNT. Yes.

The WITNESS. No, I did not design to create that impression, and my language is not capable of that construction; at least, it is not designed to be, and was not written with that intent.

Q. I will ask your attention again to the language: "I have never received, nor do I expect to, anything of value from the company." Now, is it not true that you regarded that scrip as of value?—A. I never regarded that scrip as of any essential value, or of any value unless the projects of the company were carried out; and, preliminary to all, was the proposed agreement with Peru, and that had not been carried out. Whether it was to be, I, of course, could not tell; but at that time and up to that time that scrip never had any value.

Q. Suppose that Peru had acknowledged that indebtedness, would you consider that scrip then as having any value?—A. I should, provided the company had thereupon been organized and money raised and the project carried out. If both branches or both conditions, those in North America and those in South America, had been carried out I think the company would have been a powerful and a wealthy corporation.

Q. You say you did not regard that as of any value. Were you not giving opinions with a view of influencing capitalists to take that stock?

The WITNESS. Opinions to whom?

Mr. BLOUNT. To Mr. Shipherd. Have you not stated in your direct examination that your object in some of the statements he quotes from you was to give confidence to capitalists?—A. He has stated, and I have stated, in my explanation in regard to so much of my letters as he saw fit to make public, and in the passages that you refer to, I designed and endeavored to give him the impression that the policy of the State Department, which was one of the important elements of the situation, was such as to give the opportunity of carrying out their project. I designed to give that impression. But in regard to my giving any other opinion or any other direction to capitalists, I have not done so.

Q. Did you not believe, in the interview in which Mr. Shipherd named to you eminent capitalists in New York and other parts of the country as interested with him in this enterprise, that they regarded that scrip as of value?—A. I did not get the first part of your question; will you please state it again?

Q. Did you not believe, in the interview in which Mr. Shipherd named to you eminent capitalists in New York and other parts of the country as interested with him in this enterprise, that they regarded that scrip as of value?—A. There was no scrip in existence at all until long after the interview you refer to; nor do I understand or suppose that these claims would be of any definite value unless subsequent things were accomplished.

Q. Did you not understand that these capitalists were interested in this movement—I do not care whether you call it a company, a syndicate, or what not—but did you not understand from Mr. Shipherd, and believe, that there were large capitalists in this country interested in that movement?

The WITNESS. What do you mean—pecuniarily interested? I understood this: That there were many capitalists and important business men who were ready, if the right foundation could be made for a safe business transaction, to engage in it.

Q. Did you not believe that there were good grounds for it, after having heard the opinion of Governor Boutwell, the counsel of the company?—A. The opinion of Governor Boutwell could and did have no effect upon the value of this property, unless other things could be accomplished.

Mr. BLOUNT. I know that.

A. Therefore you can hardly ask me to say that any one particular thing, where so many must necessarily conjoin to produce a result, alone gave this property value, and that I tried to influence capitalists on account of it to invest.

Q. Do not all facts like those make up the elements of value in a speculative movement?—A. Yes; and, like the links in a chain, there is no chain unless the links are united.

Q. Yes, I understand that, but it is not pertinent. I want you to answer how far you regarded the action of these great capitalists and the opinion of these eminent counsel that had such an impression on you as giving prospects of success to this movement?—A. I thought, in the first place, if the claims were worth something, if the claims in themselves were just, irrespective of amounts, if capitalists could be induced to invest upon the faith of them, if the position of the State Department was such as to give the opportunity to negotiate with Peru, and if a negotiation with Peru could be effected, and upon the strength of that agreement thus made capitalists should advance their money and the hypothecation of Peruvian resources should take place, and the company should go into operation, should take possession and actually carry out the project, that then this stock, or the property of the company, would be very valuable. Any one of these conditions wanting, and considering the matter of time and negotiation and long effort, I could not see, and do not see now, how the claims could be worth anything, at least not in the aspect thus presented. Peru for forty years had failed to pay Cochet anything and for thirty years at least, or about thirty years, Landreau had been seeking compensation and had obtained none.

Q. Did you use any language like this in writing to Mr. Shipherd: "I can only now assure you that the United States will utter her voice in a manner which will mark an era in American diplomacy. The matter is being prepared, and within a week or two you will know what is done. You should act at once as though the American ships of war were on the way to the Pacific coast. Perfect your plans. Everything here has been just as you have wanted it all the time. The policy of the government has been exactly right, and is now. Any man who proposes to take part in your project should now take hold in earnest." Did you write any such language as that to Mr. Shipherd?—A. I think I did; I do not undertake to state positively, for I have not seen my letters since they were written and I do not know their phraseology, but I would have written in that strain, and I have no doubt that I did, as he has undertaken to quote me.

Q. Now you have, in this case, got the concurrent action of the government with Mr. Shipherd. You say, "Everything here has been just as you have wanted it all the time."—A. I beg your pardon; that does not follow that there is any concurrent action between the government and Mr. Shipherd's company.

Mr. BLOUNT. Will you allow me to put my question fully?

The WITNESS. Certainly; I thought from the pause that you had completed it.

Mr. BLOUNT. I had not; you say, "You should act at once as though the American ships of war were on the way to the Pacific coast. Perfect your plans. Everything here has been just as you have wanted it all the time."

Now, Mr. Blair, with the government backing this claim in the very way that Mr. Shipherd wanted it done, did you not begin to think there was some value to this scrip?

A. You ask your question from an entirely different mental standpoint from that in which the letter was written. It had no reference whatever to the value of the scrip and I want to explicitly say that if questioned in regard to the language, I wish to make my explanation. That was written after the practical suppression of the government of Calderon, which had been initiated by Chili for the purpose of making a treaty of peace, which had been recognized by the United States, which had been confirmed by the Congress of Peru; and which had extended its jurisdiction and practical control, as I supposed, over the most of Peru. And he had, under the instructions of Congress, declined to make peace upon the basis of a cession of territory. I supposed that this act of Chili was by reason of the fact that he had ceased to be the creature of that country and represented in place of their interests, interests of his own; and that they designed its suppression to indicate their decided change of policy; either that of receiving a pecuniary indemnity, which it was indicated to General Kilpatrick, as you will see from his dispatch to Mr. Blaine, they were ready to take at one time, to another policy, or at last were openly avowing what may have been their real policy all the while, their intent to insist upon the dismemberment of that country. The action of the State Department, as far as I knew or anticipated it, was not with reference to these claims at all, nor based upon their existence or their presentation, and they had no influence whatever with the State Department. But it was felt to be an intentional insult to the American Government and in direct violation of what had come to be the understanding of this government as to the settled policy of Chili, to receive her indemnity. And I supposed, as I have stated in my explanation, that the result would be some demonstration of its feeling on the part of our government; that envoys might go there, that ships of war might be sent to take them there or might be ordered there, one or more as the case might be, and that then, as he had neglected it so long, that then at least was presented the opportunity to Mr. Shipherd to send his commissioners there to perfect his agreement with Peru and to arrange what all the time was a condition-precedent in the policy of our own government that Peru should get the money from somewhere—from these New York friends of his and others—on the strength of that Peruvian agreement to raise money and to pay it.

Mr. BLOUNT. I do not want to object to Mr. Blair's giving his own answer, but I may be allowed to say, with great respect, that I do not think all this explanation of that correspondence has anything to do with the answer. We all understand the object of these communications so far as the State Department went. But if the policy of the government was just what a private person wanted, what Mr. Shipherd wanted (and Mr. Blair was his counsel and had written to him "The government is doing the very thing you want"), then it does seem to me that the question I put is entirely pertinent and he has not answered it. I ask him whether or not, that being his understanding of the policy of the government, it did not give some value to this scrip?

The WITNESS. Well, I cannot say—or rather, I can say that view of the matter did not suggest itself to me at all whether it gave value to his scrip or not. Even if I had thought so, my letter was written a long time afterwards.

Mr. BLOUNT. Yes, I know, your letter was written November 26.

The WITNESS. I thought the object of your examination, Mr. Blount, was in some way to give the impression that I had falsely stated my belief with regard to the value of the scrip when I wrote to Mr. Eaton that I had received nothing of value; and with all due respect to the committee and the examiner, I do not feel that I ought to be subjected to a lengthy examination to show that I wrote under the influence of a motive of that kind. Still I do not complain at all.

Mr. BLOUNT. If I am asking questions directly in that way, and the answer is in the mouth of the witness, I do not think he can complain; I am not going to make his answers for him.

The WITNESS. The examiner seemed to complain of the answer which I did make, but I only made such answer as seemed to me necessary.

The CHAIRMAN. Will Mr. Blount allow me to put a single question?

Mr. BLOUNT. Of course.

The CHAIRMAN. Did you regard the securing of the friendly offices of this government, the first important step to be taken in the promotion of the interests of the Peruvian Company under Mr. Shipherd's enterprise?

The WITNESS. The friendly offices of this government—

The CHAIRMAN. Will you please answer directly how you regarded that?

The WITNESS. I did not understand that the friendly offices of this government towards the Shipherd claim were assured nor that there was a necessity—

The CHAIRMAN. The question was, if you considered that the first important step to be taken in your enterprise?

The WITNESS. I considered the friendly offices, or the friendly feeling of this government towards Peru so far as to desire that she should have an opportunity to furnish a pecuniary indemnity before she submitted to dismemberment, as an important and the first important step. So far as entering upon this project was concerned I did not understand that the government took that position with reference to this claim at all.

Q. But your first effort was to ascertain if it would take that position?—A. It was to ascertain what its position was.

Q. Yes, and you desired it should take that position.—A. I desired that this government should take a position friendly to Peru for the preservation of its territorial integrity.

Q. Was not that the first thing to be done to give value to this scrip?—A. That, so far as these claims were concerned, was indispensable to the claimants.

The CHAIRMAN. I did not wish to interrupt the examination, but I thought perhaps I might elucidate the position you took right here.

The WITNESS. I did not expect the government would change its international policy by reason of these claims. I made an effort to ascertain as well as I could what its policy was to be.

Q. And you thought if it would use its friendly offices it would give value to the claim?—A. Yes, sir, certainly, if it would do that in addition.

By Mr. BLOUNT:

Q. On the 15th of November, Mr. Shipherd writes and says:

“Senator Blair writes me, ‘Hurlbut telegraphs that the Chilians have captured Calderon and carried him to Chili.’ The Senator adds, ‘There must be trouble now. Have General Grant do his duty. American influence in America is at an end if Chili can slap our face as flatly as this.’”

What was the duty you wanted General Grant to do? I have the testimony here, and if you prefer I can read from that on this point.

The WITNESS. Well, I could not change it in substance at all.

Q. You say, “Since that last sentence was written the international sneers and giggling with which our policy has been saluted have demonstrated its truth. I did suppose there would be trouble—not war, which I did not then conceive to be probable—when Chili kidnapped Calderon, for no other reason, as I believed, than that his authority had been generally acknowledged throughout Peru, thanks to the efforts of General Hurlbut and the pressure of our mild but firm and just policy of demanding for Peru a *chance* before she should be dismembered.” Did you understand the Government of the United States to be demanding a chance for Peru before she should be dismembered?—A. I understood the government to be doing precisely what the instructions to General Hurlbut indicated.

Q. I do not want to go to those instructions; that is a long way off.—A. I had no understanding of any different attitude from that indicated by the instructions.

Q. I do not want the answer with reference to the instructions. Those instructions were not for you. You were interviewing Mr. Blaine in connection with Mr. Shipherd, and I want that, and not the instructions. I do not refer to that.

The WITNESS. You say I was interviewing Mr. Blaine.

Mr. BLOUNT. I take it you were. I understood you to say that that was your relation to Mr. Shipherd; that you would see Mr. Blaine from time to time in order to get the South American policy of the government.

The WITNESS. You have hardly quoted my statement in saying that I saw him from time to time, and in regard to that particular time when that language was written I have no recollection of any interview with Mr. Blaine excepting when he showed me this telegram from General Hurlbut, which was about the 10th of November.

By Mr. RICE:

Q. Do you say that was the only interview you had with Mr. Blaine, excepting those that you have testified to already?—A. Oh, no; I do not mean to say that. I was frequently at Mr. Blaine’s house. I was there a great many times when the Chili-Peruvian matters were not agitated, and I do not doubt they were mentioned at other times, when I was there. I was not making it the business of my life to hang around the State Department in regard to this matter, and I never knew anything that was not voluntarily told me.

By Mr. BLOUNT:

Q. You were to be paid for your services, for what you got there, were you not?—A. I have explained my relations to Mr. Shipherd.

Q. Yes, you have; I do not want any other.—A. I was not expecting compensation at that time. I expected then my fees of scrip, or whatever you please, to be returned, as I have explained already. I never thought of its being necessary for me to anticipate an investigation and return them at a mark, and I sent them back when I got ready.

Q. You did not send it back until after this was written for some time?—A. No, sir, I did not. I had many things to do, and I have not always hastened as though I expected an examination here and was obliged to get ready for it.

Q. I call your attention now, if you please, not to the official communications between the State Department and the minister in Peru, but to this expression which Mr. Shipherd quotes from you: "I did suppose there would be trouble—not war, which I did not then conceive to be probable when Chili kidnapped Calderon, for no other reason, as I believed, than that his authority had been generally acknowledged throughout Peru, thanks to the efforts of General Hurlbut and the pressure of our mild but firm and just policy of demanding for Peru a *chance* before she should be dismembered." Did you get from Mr. Blaine any information that would authorize you to make that statement, that the policy of this government had been to demand for Peru a chance before she should be dismembered?—A. It depends upon the sense in which you use that word "demand." I have explained to you that I had no idea of any policy excepting such as was indicated by the dispatches.

Q. I know, but my object is to get here a statement of your own. We cannot print the letters in full, and we want to get a statement in a succinct form.

The WITNESS. Will you explain in what sense you mean to use the word "demand," or give it in the connection that I have used it?

Mr. BLOUNT. Mr. Shipherd, I take it, means just what he says, and that it can only mean that you demanded for Peru a chance before she should be dismembered.

The WITNESS. That is language that I used in my statement here to the committee; that language was never used to Mr. Shipherd.

Mr. BLOUNT. I shall never get through unless you allow me to conclude my sentences.

The WITNESS. I thought you were misled as to the basis of your question.

Mr. BLOUNT. I think not. Mr. Shipherd is writing to General Hurlbut, and he quotes you as speaking of the firm and just policy of demanding for Peru a chance before she should be dismembered.

The WITNESS. Oh, no; I think it is hardly fair to say that. There is nothing to indicate that I used that language to Mr. Shipherd of demanding for Peru, as it states there, a chance before she should be dismembered.

Mr. BLOUNT. I am simply reading from Mr. Shipherd—a letter Mr. Shipherd read, and that is a quotation from your testimony.

The WITNESS. No, you were not reading, I think, from any letter Mr. Shipherd read now.

Mr. BLOUNT. The portion I refer to reads as follows:

"November 15, 1881, Mr. Shipherd writes to the minister: 'Senator Blair writes me Hurlbut telegraphs that the Chilians have captured Calderon and carried him to Chili. There must be trouble now. Have General Grant do his duty. American influence in America is at an end if Chili can slap our face as flatly as this.'"

The WITNESS. Yes, that is the close of the quotation; that is all that Mr. Shipherd wrote to General Hurlbut as from my letter. Now, this subsequent language, which you have incorporated with it by mistake, is my language to the committee the other day.

Mr. BLOUNT. Oh, yes, you are correct; that is a mistake on my part.

The WITNESS. I knew it was a misapprehension; I have known the examiner too long to think it was anything else.

Mr. BLOUNT. Certainly; of course. Now, Mr. Blair, you say, "I believed that General Grant was strongly supporting Mr. Shipherd's enterprise for public reasons and without pecuniary interest. I understood that his opinion was quite potential among the men Mr. Shipherd relied upon to furnish the money for the Chilean indemnity, and I believed, too, that his advice to the administration, if desired, would be such as the national honor and interests required." How did you learn of General Grant's opinions in reference to this matter?

The WITNESS. From the beginning I have kept silence in this matter because I did not care to call the public attention to any names in such a way that comment by the press might become unpleasant to them; and I know nothing of the connection of any man with this affair for which he should be ashamed, and for which he should not on the contrary be proud, as I believe. I have known something of the connection of General Grant with it through others. I have seen his own signature; but I do not want to say one word about it. I do not think the committee when they have so many other avenues of information open to them, ought to press me in that direction. I have just taken what the press had to say about myself, and I expect I can stand up under it, and if other people do not want the criticism of the press I do not care to be the instrument of calling the attention of the public to them at all.

Q. You have submitted yourself to our examination, however, and I ask you the question.—A. I will answer it if the committee say so.

Mr. BLOUNT. I want it answered.

The WITNESS. I suggest to the committee whether it is worth while. I would like to

say further to the committee at this point that I do not intend in any communication that I make to the committee to trespass upon the relations that properly exist between counsel and client, and I want to state also that this information comes to me, so far as General Grant is concerned and some other persons not connected with the government, as I think, purely through that relation; I would not have been likely to have had it but for that relation. Mr. Shipherd has himself testified to some extent with reference to General Grant. I know nothing whatever discreditable to General Grant in connection with this matter, but, on the contrary, I think it is quite honorable to him, so far as this matter is concerned. The committee, of course, can do as they please about it. I do not know much in that direction, but I know something.

Mr. BLOUNT. Mr. Chairman, I want to say just there that Mr. Blair says, possibly significantly, that he knows nothing to the discredit of General Grant. I want to disavow any intimation of anything of that sort, but if any gentlemen in this country have been trying to use that name for the purpose of influencing this administration to enforce this claim against Peru, I want the gentleman to refuse to answer the question or to answer it.

The CHAIRMAN. I understand then that you insist upon an answer to the question.

Mr. BLOUNT. I do.

The CHAIRMAN. The only way to test the expression of the committee, as I have said before, would be to go into executive session.

Mr. BLOUNT. Then I ask a conference of the committee.

The CHAIRMAN. If there is no objection on the part of any member of the committee to the question being pressed, it would hardly be necessary to go into executive session. If there is such objection it may be manifested now. (After a pause.) There seems to be no objection raised to the putting of the question by the committee.

Mr. WILSON. As Mr. Blount has been conducting this examination with great ability, and after considerable reflection, I think I would like to hear from him a brief statement of the reasons he has for pressing the question.

Mr. DEUSTER. He has stated the reasons already. There is no objection on the part of the committee.

Mr. WILSON. It may be immaterial to Mr. Blount, but as he has had the matter in charge and has given very close attention to the whole subject, I would like to hear what his views are upon that point.

Mr. BLOUNT. I would like to say here that there is no question, I suppose, in the mind of any member of the committee but what Mr. Shipherd and the Peruvian Company have been endeavoring to use the power of this government to collect from Peru \$1,200,000,000. They have, amongst other things, sought to bring to bear, and it appears in this correspondence, the name of General Grant to influence this administration to a given policy in South America for the purpose of benefiting that claim. Now, I want to know who those gentlemen are; I think it is pertinent; I do not know what may come of it.

By Mr. RICE:

Q. Do you answer the question of Mr. Blount by saying that you were counsel for Mr. Shipherd?—A. I said that whatever I learned from Mr. Shipherd in that regard came to me undoubtedly by reason of my relation as counsel.

Q. Do you mean to say that it came to you from Mr. Shipherd personally as counsel or from somebody else?—A. Everything that I learned of that kind came through Mr. Shipherd. I do not mean that everything I learned was based entirely upon his word.

Q. But you mean to say that it was a personal communication from Mr. Shipherd to yourself that conveyed to you all the information that you had upon that subject?—A. Well, in discussing this matter and waiving the relation of counsel I would say to the committee I had personal communication, that is, so far as this point is concerned, from Mr. Shipherd, and I had other evidence of a documentary character.

Q. Furnished you by Mr. Shipherd or by somebody else?—A. It came to me from, or was shown to me by, Mr. Shipherd.

Q. Do you understand that the rule of protection which you have invoked of the privilege of communications between client and counsel covers anything else than what the client himself communicates to his counsel; does it cover anything which he gets from other sources than his client? I merely ask you for your understanding of it. Suppose you had a talk with General Grant himself upon this subject?—A. I do not suppose it would have been protected.

Q. You do not suppose it would have been?—A. No, sir; not at all.

Q. Then you do not suppose that conversation that you had with other persons than Mr. Shipherd would be protected by that rule?—A. No; I suppose what is protected is that which comes to me by the act of a client himself.

Q. I wanted to get your information to see how far you intended to put yourself under the protection of that rule. I understand then that you decline to answer on that point on that ground?

The CHAIRMAN. I understood Mr. Blair to *refer* to his relation as counsel. I did not understand him to decline to answer on that ground as yet.

Mr. BLOUNT. I want to say here, once for all, that so far as I am concerned, this distinction which Mr. Shipherd has paraded here, and which ran from the commencement of his engaging in a business which contemplated the possibility of involving this country in a war with South America, is not, in my judgment, to be covered up by the protection which applies to counsel and client. I do not think it gets down to that according to that rule.

The CHAIRMAN. Would it not be well to ascertain first whether Mr. Blair does put himself upon his privilege as counsel?

The WITNESS. I would state first that I have no knowledge of any project on the part of Mr. Shipherd, or anybody associated with him, to involve this country in war; quite the contrary; and nothing that I say is based upon any expectation of that kind.

Mr. BLOUNT. I am not speaking, Mr. Chairman, of Mr. Blair's apprehension of this matter. The committee have an idea about this investigation, and about this enterprise and its purposes, and it is for the committee to say whether they will hear testimony or not, and whether it illustrates their position or not.

The CHAIRMAN. It can easily run into collateral matters.

Mr. BLOUNT. Yes, but that is a matter we can control at any time.

The CHAIRMAN. With Mr. Blount's permission I will ask Mr. Blair this question: Do you claim the privilege, as counsel to Mr. Shipherd, of declining to answer the question?

The WITNESS. I have not declined to answer this particular question.

The CHAIRMAN. Very well; then we will proceed.

The WITNESS. I said I should claim this privilege where I thought it properly applied. I think that no committee would expect me to come here and dishonor the relation between attorney and client. I am willing that the committee should have everything I can give it that does not invade that relation. Now, as to this specific question, I understand the committee to say that they want it answered, and without any reference to what I may do in regard to any other question, I say that my knowledge of General Grant's relations to, and opinions of, and inclinations in reference to these claims are derived through statements made by Mr. Shipherd to myself and from no other source, except the formal indorsement of General Grant's approval upon, as I recollect it, the demands upon Chili and Peru setting forth these very claims. I wish to say that I may be wrong as to the instrument upon which I saw his approval and indorsement. It may have been some dispatch that it was desired to have sent in reference to their presentation by our ministers to the governments of Peru and Chili. I cannot say upon what instrument I saw the indorsement, but I did see it upon one or the other, and it, of course, settled in my mind any questions that might have arisen as to the possible undue hopefulness of Mr. Shipherd's representations as to General Grant's views on this subject.

By Mr. BLOUNT:

Q. You understand, then, to use your own expression, that General Grant favored a formal demand upon Peru for the adjustment of these claims?—A. I said it was either on a formal demand, or else it was on some dispatch which he thought was a right one to send with reference to the presentation of these demands by our ministers in Peru and Chili to the governments of those countries, respectively.

Q. You do not understand me. I am not speaking about what source you got it from, but I ask you whether you understood that General Grant favored the formal demand to be made by our government upon Peru for the payment of these claims?—

A. Upon an instrument which, according to my recollection, was shown to me in this city by Mr. Shipherd as the original, approved by his counsel in New York, as a proper form of demand upon Peru and notice of demand upon Chili, and from which I suppose the demand and notification of the demand which you already have in the case printed and published was drawn, I saw the approval and autographic indorsement of General Grant upon a dispatch or draft of a form of dispatch which he thought was a proper one to send to our ministers in those countries, asking the good offices of our legations in favor of the claims; something of that description. I do not undertake to state the precise form of the dispatch, if there was one; that is, if it was a dispatch.

Q. You use the words "good offices."—A. I say I do not undertake to give the language, and I do not propose to be cross-examined upon that language as though I had testified to it. I give it to the best of my recollection.

Mr. BLOUNT. Mr. Chairman, I want to say to the witness that I am going to treat him with all the courtesy that he can ask, but I am not going to be stopped by any consideration in any question that I think proper to put, except by a vote of this committee.

The WITNESS. The examiner does not need to asseverate his design to ask questions, nor intimate mine to avoid them. You began by using the words "good offices," which I disclaimed—

Mr. BLOUNT. If the witness will be patient he will understand the question I was asking.

The WITNESS. I will endeavor to be patient, then.

Mr. BLOUNT. A few moments ago the witness spoke of an indorsement made by General Grant on a dispatch containing a formal demand that was an expression in reference to these claims, which, Mr. Blaine says, means when refused shotted cannon. Now, in his last expression he uses the words "good offices" contained in that dispatch, and I call Mr. Blair's attention to it because there is a difference, as I understand it, between the two phrases in a diplomatic sense. I did not do it for the purpose of contradicting him at all.

The CHAIRMAN. The witness can explain how he wishes to be understood.

Mr. BLOUNT. That is all I wanted the witness to do. I have not the slightest desire to show him any discourtesy in the world.

The WITNESS. I think Mr. Blount's misapprehension will be at once removed when I say that I had no reference to any demand by this government. But the instrument which is in point before the committee is the instrument which was served by the counsel or by some one under the direction of Secretary Boutwell upon the Chilean and Peruvian ministers here; the original from which they were copied, and which had, as I said, (it was my recollection or impression), the indorsement of General Grant. I said his indorsement was upon that instrument, or it was upon a form of dispatch which Mr. Shipherd brought here at one time with his approval as to what he thought was a right thing to send to our ministers.

Q. Will you please state what was in that dispatch?—A. I have that dispatch here with me, a or copy of it [producing a paper]. This is a copy of the memoranda of the dispatch which Mr. Shipherd desired to have sent to our ministers, but which was not sent. This one is addressed to Mr. Kilpatrick, but it was never sent at all.

Mr. BLOUNT. Will you read it to the committee, or allow the clerk to read it?

The WITNESS. I have no objections to the clerk seeing it, but I can perhaps read it as well myself. I wish to say before reading this that I think General Grant's indorsement was upon an original like this, or it was upon a paper such as I have indicated. I mean the demand that was made upon the Peruvian minister here in this city; but I am not sure about it.

By Mr. RICE:

Q. Before you read that I would like to ask you a question. There were certain notifications of demand drawn up by Mr. Shipherd or by his counsel to be served upon Peru, and notices of that demand upon Chili. They were brought here or sent here to Washington and filed in the State Department?—A. Yes, sir.

Q. And they are in this printed book here?—A. Yes, sir.

Q. And there was a dispatch or letter sent, if I recollect right, by Mr. Blaine, testifying that those had been filed?—A. Yes, sir; that is, to Mr. Shipherd.

Q. Now, in addition to that, Mr. Shipherd wanted to have a dispatch referring to that demand and notice sent to South America?—A. Yes, sir.

Q. And it is that dispatch of which you now have a copy?—A. Yes, sir.

By Mr. LORD:

Q. And that he proposed to have sent by the State Department?—A. He desired to have this sent through the State Department.

Mr. BLOUNT. I will bring that all out directly.

Mr. LORD. Now, I would like to have those papers read by the witness.

The WITNESS. These papers are not dated, and I cannot tell the date of them, but I suppose the date to be about the middle of October. The one to General Hurlbut is as follows [reading]:

"To HURLBUT:

"Memo. for draft.

"Your attention is directed to duplicates of two inclosures:

"1. Printed official copy of a letter from the president of the Peruvian Company to Mr. J. F. Elmore, the minister of Peru at Washington, bearing date October 1, 1881.

"2. A like copy of a letter from the same to Mr. M. Martinez, the minister of Chili at Washington.

"Printed papers stating clearly the origin, extent, and character of this claim of title, and indicating the evidences relied on to sustain it, have been heretofore filed in this department, together with an affidavit of merits; and copies of the present inclosures, with due proof of the delivery of the two originals to the respective addresses on the 13th instant, have also been filed.

"The department has not been asked to express any opinion upon the merits of this claim, and you will carefully avoid any expression of your individual judgment. You will, to complete beyond question due notification, immediately deliver to the President of Peru one copy of each of these inclosures together with a copy of this note, and will report promptly such comment or response as may be communicated to you. Obviously the opinion of no third party will be material, if upon investigation

the Peruvian executive shall perceive the title asserted to be in fact valid and shall so admit. If, on the contrary, Peru shall contest this demand, the issues raised by her denial may then seek a proper adjudication.

"It is proper to add that the department consents to file and transmit these notices because the papers supporting them do seem to present a *prima facie* case, and also because these papers disclose a complete scheme for the relief of Peru without injustice to Chili, at the same time providing fairly for all of Peru's creditors.

"Such a scheme as this promises to meet the conditions suggested in the instruction furnished you upon your departure from Washington in June last, and you will therefore, pursuant to those instructions, hold yourself ready to co-operate promptly and heartily with the Peruvian executive, if, upon the approval of the title asserted, that executive intimates a readiness to make use of the aid offered by the claimant's scheme.

"While no disposition is cherished in the United States to prevent aid to Peru from any legitimate quarter, affirmative encouragement can only be given by this government to the enterprise of its own citizens, and such encouragement under proper conditions will never be withheld.

"Your instructions in these premises for the time being are complete when I have added that you will clearly point out to the Peruvian executive the obvious inexpediency of any commitment by that executive pending the final adjudication and satisfaction of this large claim, which, in the event of its approval, might embarrass its prompt and entire satisfaction."

Mr. BLOUNT. Is that all of the dispatch?

The WITNESS. Yes; all of the proposed dispatch to General Hurlbut.

The second dispatch was to Mr. Kilpatrick, as follows:

"TO KILPATRICK:

"Memo. for draft.

"Your attention is directed to duplicates of three inclosures.

"1. Copies of instructions to the American minister at Lima of even date herewith.

"2. Copies of the first inclosure mentioned therein.

"3. Copies of the second inclosure mentioned therein.

"You will consider the instructions to Mr. Hurlbut as intended equally for your own guidance, so far as the issues involved may concern the government to which you are accredited.

"You will immediately deliver to the Chilean executive one copy of each of the inclosures above named, and will report fully and promptly such comment or response as may be communicated to you in the premises."

That was all to General Kilpatrick, and on this instruction, as I recollect, or on this draft, or upon the notification, the original, from which the notification actually served upon the Peruvian minister here was copied, was the indorsement of General Grant; that is my recollection in regard to it, but I am not sure which paper it was on.

By Mr. BLOUNT:

Q. You understand the views therein expressed to express General Grant's views in connection with the South American policy, and in connection with these claims?—

A. I do not know which paper General Grant's indorsement was upon, and I do not undertake to explain or to repeat his views based upon his autograph any further than indicated by the paper on which that autograph was placed. Personally, I never spoke to him about it.

Q. It may have been upon that paper?—A. It may have been, and I always thought it was upon it, and it remains in my mind now that it was upon the notification and not upon either of these.

Q. Will you tell me who constructed that paper?—A. I do not know. That came from Mr. Shipherd, and I did not recognize the handwriting of either of them.

Q. He sent you that copy?—A. He sent or delivered them, I have forgotten which.

Q. What were you expected to do with them?—A. I was expected to communicate their contents to Mr. Blaine, but Mr. Blaine did nothing with reference to them. He had constantly, from the first, declined to do more than was indicated in his original acts, and never, so far as I know, modified his attitude towards South America, or towards these claims, from the beginning.

Q. About what is the date of that paper?—A. I cannot tell, but it was not far from the middle of October, I think.

By Mr. RICE:

Q. It speaks of the 13th?—A. Yes, sir. It was subsequent to the 13th, and, as you say, this has reference to those papers.

By Mr. WILSON:

Q. In answer to a question of Mr. Blount's, propounded to a former witness, he says: "I am able to tell you, on the highest authority, that the Department of State has

long ago notified Chili in the plainest words that she will not be permitted to take any territory from either Peru or Bolivia, except it be found that there is no other possible way of securing her proper war indemnity. I am able, on the same authority, to tell you that she (Chili) has been notified that American citizens have filed at Washington their claim as owners of all the guano now in Peru, and that for every pound she takes she must hereafter account to the United States; and that she has also been notified that no cession of territory or property by Peru will be permitted until the Cochet and Landreau claims have first been provided for."

The WITNESS. Does that purport to be a letter from Mr. Shipherd?

Mr. WILSON. No, it purports to be Mr. Shipherd's answer here. I understood you to say you were present with the Secretary of State and Mr. Shipherd, and I desire to call your attention to it in that connection, and ask you whether you have any knowledge of anything in regard to that subject as stated in that answer.

A. No; not so strong as that, at all. The attitude of the State Department with reference to either claim was never stated any more strongly in my presence than appears in the instructions of June 15, and in the letter of August 4.

Q. Then you know nothing of this information he professes to have from the highest authority?—A. I do not know anything of that, at all.

By Mr. BLOUNT:

Q. You carried these papers, you say, to Mr. Blaine and submitted them to him?—

A. I did not state that I submitted the papers to him; I said I made the contents of them known to him.

Q. Very well, that answers the same purpose. What was your object in that—to see whether you could induce him to send that dispatch or not?—A. It was to make known to him the contents of those papers, as desired by Mr. Shipherd; I never expected them to be sent. I knew the attitude of the government, and I did not expect any modification of it; I did not think it could be had.

Q. You communicated them to the Secretary of State, then, simply because you were in the service of Mr. Shipherd and he wanted it done?—A. Yes, sir.

Q. You say in your statement made to the committee: "To the statement made to the committee that I told Mr. Shipherd to quote the Secretary much stronger than his own words, &c., I wish to observe that I do not recall such expressions." Can you say positively whether or not you used such expressions?—A. I have no idea I used the expressions in that form. I have no idea, either, that I failed to impress upon Mr. Shipherd my belief that the attitude taken by the government would be maintained—that is, that she would ask, and continue to ask, of Chili that an opportunity be afforded by negotiation with Peru to obtain a pecuniary indemnity, and that a dismemberment of her territory should not be insisted upon as a primary condition.

Q. Do you think, then, that Mr. Shipherd willfully misrepresented you in this quotation?—A. That raises a question which, most certainly, I am under no obligations to answer. But I wish to say this, that Mr. Shipherd has been before this committee, and you have all seen a great deal more of Mr. Shipherd, I think, than I ever did, and you had quite as good an opportunity to judge in regard to the character of the man's mind, and whether he may sometimes assert things from a too great hopefulness and buoyancy of disposition, when he does not mean to misrepresent; and you can judge whether he is to be relied on in other directions.

Q. Is that your opinion of him?—A. Mr. Shipherd is a man of extraordinary powers of mind in some directions, and of very great peculiarities in other directions. I have never fallen in with any such man before or since.

By Mr. RICE:

Q. He did misrepresent you in that statement?—A. Yes, sir; so far as my expressions are concerned; I do not think I ever used those expressions.

By Mr. WILSON:

Q. You never came in contact with such a man, or with so big a claim before?—A. No, sir; I never had such a large private claim as that to deal with before. I have no disposition to say anything harsh or uncharitable of Mr. Shipherd at all; I do not think it is my province to do so; and I do not think it is my province either to eulogize him. That whole matter is for the committee to decide upon.

By Mr. BLOUNT:

Q. I would like to ask you again in another connection as to your opinion of Mr. Shipherd in that regard. I want to ask you in connection with another statement of Mr. Shipherd's. He has stated in his testimony before the committee, the following:

"At some time during this interview I was at the pains to recapitulate to the Secretary all the steps which I had taken up to that time in the direction of negotiations with the government. I recited the various letters that had been written, and in order to assure myself that they had been received, &c., I referred particularly to the 16-page letter to Mr. Hurlbut, and to the fact that I had mailed a copy of it immediately

to the President. Somewhere in that connection (I do not now recall the immediate suggestion which brought the matter out) I said, 'There is another letter, Mr. Secretary, which I do not think you have seen. I wrote to General Hurlbut early in June'; and I then quoted to him verbatim this letter to General Hurlbut. There are very few letters which I carry verbatim in my mind, but I had my own reasons for having this letter always before me. I mentioned the fact that General Hurlbut did not come to see me in New York, as he had promised to, before sailing, although, as I understood, he was a week in New York at that time, and I thought it was a little odd. I said, 'You see, Mr. Secretary, that I did not succeed in buying him, if he thought that I was trying to.' Some remark was made previously by the third party present (whom he represented to be you) as to the folly of attempting to seduce General Hurlbut by offering to sell him stock. The Secretary nodded, and laughed, and said he did not think we would 'fetch him' (or some remark of that sort)."

Did any such conversation take place with reference to the letter of June 2d?—A. No; I have no recollection of any such conversation as that, at all; and I do not see how I could have participated in it without remembering it.

Q. You do not believe there is any truth in that part of that statement?—A. I have made my answer.

Q. I believe you have stated in your testimony that Mr. Shipherd read to you a part of the Camacho letter, have you not?—A. I said I thought he did not, all the correspondence.

Q. Where were you when he read that, do you remember?—A. In New York, at his office.

Q. You were in consultation with him as to your business as attorney, were you or not?—A. I was at that time; I went in to see him.

Q. And these papers were being exhibited to you in that connection?—A. Yes, sir; the papers, as I recollect it, that he had forwarded.

Q. That had already been forwarded?—A. That is my recollection in regard to it, as I stated in my written statement the other day. My recollection is that I was there at one time after he had sent these papers, and it does not seem to me that he read all that he had, but he read to me some few minutes, I do not know how long, but for a time, and he had forwarded those papers to Mr. Arizola through Mr. Hurlbut. I know the sending them so was spoken of as almost a necessity, because the Chilians were understood to be rifling the mails, and hunting for communications from this country to that country. I do not say that that is a letter from Mr. Camacho; I do not know in regard to that part of it. It was in my mind, until it seemed to be assumed in this investigation that that was a letter of Mr. Camacho's; that it was from Mr. Tracey, the consul of Peru, in New York City, who, I understood from the first, was exceedingly anxious that this enterprise should be carried out as the only hope that he saw of getting the pecuniary indemnity for his country.

Q. It is divided into paragraphs, which are numbered, and in paragraph No. 13 of this letter to Dr. Arizola he says:

"I may say further concerning these gentlemen, whose identity is known to me in detail, that they include the nearest personal and political friends of the Executive, and not only of the present Executive, but of the Vice-President as well, who will succeed to the Presidency in case of President Garfield's death. They also include representatives of the most powerful money corporations in the country, and you may rest absolutely assured that in dealing with them the Peruvian executive is for all practical purposes dealing directly with the power and the honesty of the United States itself. Once established in their great property in Peru they would be protected if necessary by the entire power of their government, no matter who the acting Executive might happen to be. For the commercial enterprise of this nation has now become as powerful as that of England once was, but most happily without any of that selfish greed which has made England the foe of her own colonies, and hereafter American property interests in foreign lands will be thoroughly taken care of."

Was that a correct representation of this government when this language is used, that Peru in dealing with these capitalists might rest assured that she was "dealing directly with the power and the honesty of the United States itself"?

The WITNESS. Is your question complete?

Mr. BLOUNT. Yes.

A. Certainly not as matters then stood. I do not remember hearing the representation read. I suppose that representation by Mr. Shipherd must have been made by him or by Mr. Tracey, or Mr. Camacho, who wrote the letter, with reference to the consummation of all their plans, rather than to the existing condition at that time, because his plans were of course inchoate, and the letter itself explains fully how nothing could come of it except by the agreement and co-operation of Peru herself.

Q. Yes. I understand that. Leaving that for a moment and returning to this letter, I observe that in paragraph 19 its writer says: "From the first Mr. Shipherd has sought to reach Elmore, but always in vain. He has, therefore, freely consulted Mr. Tracey, but Mr. Tracey could only answer for himself, and could not of course bring

anything to the notice of the Executive." You would not think now that that was written by Mr. Tracey, would you?—A. I would not from that clause, certainly.

Q. Do you not understand from that paragraph that in the event of Peru's agreeing to these claims that these people were to have the power and honesty of the United States Government at their back to carry out any agreement that they might make with Peru, in reference to the payment of these claims, and the furnishing of any money for an indemnity, and the staying of the hand of Chili beyond that?—A. Well, I suppose that an American company, entering into the contemplated arrangement with Peru, obtaining rights as American citizens, would have the protection of its government just like anybody else, and I do not suppose that Mr. Shipherd designed to represent anything more than that. Certainly no intelligent man could expect anything more than that. I do not imagine that the President of Peru, who is said to be a very fine lawyer and a most intelligent gentleman, if that was to be communicated to him by Dr. Arizola, would have expected anything more than that the government would take care of its own citizens having property on a foreign soil. I do not suppose or expect that the government would indorse their pecuniary responsibility, or furnish money if they did not. And as to the last of your question—the government's staying the hand of Chili—I do not suppose the hand of Chili would be where it would need to be stayed if her pecuniary indemnity was paid to her. I supposed she would evacuate the territory, and that the indemnity would result in peace.

Q. I call your attention to another paragraph in this same letter, paragraph No. 14, which reads as follows:

"The people of the United States, as we have seen in the matter of the proposed Panama Canal, are determined that no European government shall take foothold in this hemisphere, but they have no ambition for themselves except an honorable commercial ambition. They want no more territory, nor do they wish to meddle at all in the political affairs of sister republics. They are willing, as in the present instance, to forbid the victor an extreme cruelty upon the vanquished, and for the rest their only desire is to see every republic cultivate the arts of peace, and become happy and prosperous within its own borders."

The WITNESS. Is that put to me as a question?

Mr. BLOUNT. I have not put the question yet; I have only read the paragraph. I want to ask you if there is not in that an enunciation of the idea that this government will not allow Chili to proceed with extreme cruelty towards Peru?

The WITNESS. I understand that there is an enunciation of the opinion of that writer, that this government would not allow the infliction of extreme cruelty by one sister republic upon another. And so far as the question of international law is concerned, I understand it is the duty of a nation having the power to prevent the infliction of extreme cruelty by the victor upon the vanquished; and the authorities upon that point are as explicit, I think, as upon any other.

Q. I do not want to enter into any argument at all. Referring again to this same letter, I observe that the 15th paragraph reads as follows:

"I am able to tell you on the highest authority, that the Department of State long ago notified Chili in the plainest words that she will not be permitted to take any territory from either Peru or Bolivia, except it be found that there is no possible way of securing her proper war indemnity. I am able, on the same authority, to tell you that she (Chili) has been notified that American citizens have filed at Washington their claim as owners of all the guano now in Peru, and that for every pound she takes she must hereafter account to the United States, and that she has also been notified that no cession of territory or property by Peru will be permitted until the Cochet and Landreau claims have first been provided for."

"You perceive, therefore, that already Peru has a great friend at her back, and that henceforth it is only necessary for her to lean upon that friend to be wholly saved." Do you understand that the State Department took any such position and made any such communications to Chili?—A. I do not. I do not remember hearing that or those other paragraphs that you have read rehearsed at the time; I may have heard them, but I have no recollection of them. I do not understand that the State Department had ever taken any position or made any communications to its ministers or to the governments of Peru or Chili different from what is in possession of the committee. He uses the expression "the highest authority." I do not know what he might consider the highest authority. As to the services of these notifications upon the representatives of the two countries here, they were made by Mr. Shipherd himself; that is, the return shows that they were made by somebody he employed.

Q. Was not Dr. Arizola the representative of the Peruvian Company at Lima, and was not he a great friend of President Calderon, and supposed to be very close to him?—A. I do not know anything of Dr. Arizola, or that the Peruvian Company ever had any representative at Lima at all. I never heard of its having any representative there at all.

Q. Was Dr. Arizola expected to urge upon Mr. Calderon this phase with a view of

forwarding the claims of the Peruvian Company?—A. I cannot say in regard to that any better than you can. Those documents were prepared, and they were forwarded; by whom prepared I do not know. From the beginning I supposed and always considered the entire enterprise dependent upon responsible commissioners being sent by these New York parties, Mr. Shipherd and those he represented, to Peru to make such agreement as they could make with that power with reference to whatever should be paid upon these claims, one or both of them, on the one part, and the money that should be advanced to help Peru on the other.

Q. This paper was submitted to you by Mr. Shipherd with other papers because of your relation to him as counsel?—A. I do not say that that was submitted to me because of my relation to him as counsel. I stated before that I had nothing to do with the preparation of it at all; and, so far as I remember, I had no knowledge of it until afterwards; and my knowledge was only partial any way. He read some portion of what he had sent to Peru, and informed me of the fact that he had done it. I did not see the part he read, and I never knew the entire contents of the paper until it was published by the State Department. So far as that document is concerned I had no responsibility for it at all as counsel.

Q. I would be glad if you would answer the question?—A. I thought I had.

Q. I think you misapprehended me; I did not mean that you did not want to answer it; I just wanted to call your attention in that way back to the question.

The WITNESS. Please repeat the question.

Mr. BLOUNT. I will put it in a different way. This paper would not have been submitted to you but for your employment by Mr. Shipherd?—A. I probably would not have been there if I had not been employed as counsel; but it is quite another question whether that might not have been read to me—some portion of it. Mr. Shipherd is a prolific writer.

Q. You think, then, he is so prolific that he would be likely to communicate it to anybody?—A. No, I do not say that at all.

Q. Why do you think he submitted it to you?—A. I said I was his counsel, and I say it was from my being there; I probably would not have been there if I had not been counsel; and that it is no more my act as counsel —

Mr. BLOUNT. I am not saying that it is. I understand this was sent off without your knowledge.

The WITNESS. Very well; then we understand each other perfectly.

Q. With that understanding I will ask you this: Mr. Shipherd has stated in his testimony that Dr. Arizola was an intimate friend of President Calderon, and was expected to present these papers. Had you known the character of this paper which was sent by Mr. Shipherd to be presented by Dr. Arizola to President Calderon with a view of furthering these claims, would you have continued your connection with that company?—A. I do not know. There are some statements there in regard to his associates—those who were, as he says, intimately acquainted with men in power, and the like; and I did not know and do not know now whether they are true or untrue; they were not within the scope of my knowledge. I could not say that those were wrongful misrepresentations or incorrect.

Q. You understood the policy of the State Department in relation to affairs down there?—A. I was coming to that. So far as these statements as to the policy of the State Department as communicated to me are concerned, they are altogether too strong, as I understand it; and I should not have made myself responsible for any instrument of that kind.

Q. Was it not a gross misrepresentation of the State Department?—A. Not as I understood the position of the State Department.

Q. Do you understand the State Department is correctly represented in this statement? “I am able to tell you, on the highest authority, that the Department of State has long ago notified Chili in the plainest words that she will not be permitted to take any territory from either Peru or Bolivia, except it be found that there is no other possible way of securing her proper war indemnity. I am able, on the same authority, to tell you that she (Chili) has been notified that American citizens have filed at Washington their claim as owners of all the guano now in Peru, and that for every pound she takes she must hereafter account to the United States, and that she has also been notified that no cession of territory or property by Peru will be permitted until the Cochet and Landreau claims have first been provided for.”—A. That last part—such notification as that—I supposed Mr. Shipherd understood that he had made personally. The first part, representing the attitude of the government, he stated more strongly than I ever understood it to be. There is quite a conglomeration of ideas there, as you will observe; and your question raises different points and might be divided into several parts.

Q. Very well; I will divide it then. In the first place, it is stated here: “I am able, on the same authority, to tell you that she (Chili) has been notified that American citizens have filed at Washington their claim as owners of all the guano now in Peru, and that for every pound she takes she must hereafter account to the United States.”—A. That is upon the highest authority; the same authority.

Q. Yes?—A. The only notice that had been given, so far as I know, was given by Mr. Shipherd himself; and he may have considered, as he represented the claims, that he was the highest authority. If he meant the State Department he is incorrect.

Q. He says of the State Department: "I am able to tell you, on the highest authority, that the Department of State"—has what?—"has long ago notified Chili," &c. You are correct; Mr. Shipherd may have been the highest authority, and Mr. Shipherd, or whoever he is, represented the State Department to Dr. Arizola as entertaining these views, for the purpose of having them communicated to Calderon, the President of Peru. Now, I ask you if that portion is not a misrepresentation of the State Department?—A. And I answer that in some sense I so consider it.

Q. Do you not regard it as an outrage upon the State Department and upon this country?—A. I desire to state to the committee that I have been counsel for Mr. Shipherd, and I am answering all the questions that you ask. But I think there is an impropriety in your asking me to come here and denounce my former client, and I am not disposed to do it. I understand that relation exists as long as life lasts; and I never abuse a man, whether I think him a knave or a fool, that I have been counsel for; and I do not propose to do it, whether I consider him a gentleman or not. I do not wish to come here to do a thing which I understand to be unprofessional; and if gentlemen on the committee have any indignation they are at liberty to express it if I have any I am only at liberty to suppress it.

Q. There is another view of that matter that occurs to my mind, and that is this: Mr. Shipherd stated in the outset that his idea in employing you was that your relations to the Secretary of State would give you access to him. My purpose is to ascertain whether or not, had you known that that was in there, you would not have felt it your duty to communicate it to Mr. Blaine as a misrepresentation; whether or not your duty as a Senator of the United States did not there intervene and make it your highest duty to communicate to the government that it was being misrepresented for the purpose of obtaining from President Calderon a concession of these claims?—A. I should have thought so. I wish to say further, on this same point, that this matter, as I understood, passed under the eye of the American minister who had the instructions, and who was in closer relations, or as close relations, with the Peruvian Government, by reason of personal friendship and daily intercommunication, as any man could be; and that there was not the slightest possibility of the actual attitude of the government on this subject being misrepresented by anybody down there; I do not see how it was possible. Whatever Mr. Shipherd may have written, I do not see how the American minister on the spot, with his actual instructions open or secret, if he had secret instructions, could be misled; or if anything was wrong in the letter, that he could fail to correct it on the spot.

Q. Now, I want to see whether the State Department was protected in that way. I do not know whether General Hurlbut wrote it or not; but Dr. Arizola, to whom this letter is written, November 9, 1881, writes to Mr. Shipherd from Lima as follows:

"ESTEEMED SIR: By the last mail from Panama I received your letter, which, by advice of your friends, you have addressed to me under date 5th of October last, developing the vast financial plan which the Peruvian Company proposes to realize.

"I regret to state to you in reply, that having placed myself in accord with his excellency the Provisional President of the republic, for a conference which was to have taken place at 12 o'clock noon of Sunday, the 6th instant, with the object of showing to him, as well your opinion as the documents and other papers which accompany it, a new outrage upon Peru, doubtless the greatest of the Chilean domination among the episodes of the state of war in these latter times, absolutely frustrated the conference agreed upon."

Evidently Dr. Arizola does not find in this letter any obstruction of the purposes of the letter that he had been previously discussing. Have you examined the letter?

The WITNESS. Dr. Arizola's letter?

Mr. BLOUNT. Yes.

A. I have a general impression in regard to it, which was that it was not communicated.—Q. He sought to communicate it, and was interfered with by the arrest of President Calderon. In the latter part of the letter he says, referring to Montero:

"The latter will assume the command the moment the news of this infamous outrage shall reach him, and it is evident that by lending to him a strong hand on the part of the Government of the United States we may arrive at the desired solution of all the questions of the war and at the restoration of internal order.

"Whatever you and your friends may do in this sense will be a benefit to Peru and the victory of your own plans."

Now, I ask you if it does not appear from this communication that that was put in his hands, and whether or not it was not the opinion of Dr. Arizola that it would have been successful if it had not been for the capture of President Calderon?—A. I think that Dr. Arizola evidently meant to give the impression that actual negotiations would have resulted in the substantial success of Mr. Shipherd's plans and the relief of Peru. That letter I have no recollection of until since its publication.

Q. That Camacho paper or letter which we have been discussing previous to this was one of the documents filed upon which he hoped to bring about the success of the plans of this government; did you not so understand?—A. I suppose so, of course.

Q. Did you ever examine this Arizola paper before the severance of your connection with Mr. Shipherd?—A. No; I have no recollection of knowing the contents of that letter until its publication. I remember this, though I do not know whether it is important. There were complaints by Mr. Shipherd in reference to the non-delivery of these papers, and I knew that he had received the communication—I understood he had from Mr. Arizola; but the purport of the paper I do not remember, or anything about it, excepting that it was a complaint that a letter was received and the accompanying documents were not received.

Q. You have some knowledge of the Cochet and Landreau claims; you have examined the papers, I suppose, have you not?—A. Yes, sir; I have, somewhat.

Q. When did the Landreau claim or the cause of the foundation of it commence?—A. About 1850, if I recollect right. The documents, I suppose, would show that more correctly.

Q. I want to ask if this is your recollection of the prospectus as to that claim:

“The Landreaus were both originally French citizens. J. Théophile Landreau, who is the active man in these Peruvian transactions, the man who made the alleged discoveries, and who dealt directly with the Peruvian authorities, is still a French citizen, never having changed his nationality. John C., his brother, an alleged partner in the Peruvian transactions, is a citizen of the United States. His certificate of naturalization, a copy of which is submitted with the papers now before me, shows that he came to the United States in 1857, being then a minor under the age of 18 years; that he was admitted to citizenship in the sixth district court of Louisiana, at New Orleans, on the 3d of June, 1867; and it further appears that he has been a resident of Hermitage, Louisiana, ever since 1857.” Then follow a number of letters. “Among the inclosures to Mr. Thomas’s present dispatch is a copy of a correspondence between the brothers Landreau, running from December, 1858, to February, 1870 (inclosure B). The partnership of John C. with his brother Théophile in the Peruvian business forms the topic of all these letters, sixteen in number,” and he begins with 1858 and traces the correspondence down to 1860. Now, was there any work done by Théophile or John C. Landreau in the discovery of guano upon which to base that?—A. I should infer so. The House of Representatives regarded the claim as a valid claim, and one that should be enforced by the executive department; and quote the case of Colton, who had a case against Bolivia, as an authority on that. I think you will find all the papers before the committee, where the ground is taken that it would be the duty of the government to go even to the extent of war to enforce such a claim.

Q. I would be glad if you would confine yourself to this matter now. I am asking you about this paper, and I want to see if you have any recollection of any such paper among any of the documents submitted to you?—A. I cannot say that I have.

Q. If that statement is correct, is it not true that all of these discoveries had been made by the Landreaus when they were French citizens?—A. I do not know in regard to what you ask. My opinion or idea in reference to the Landreau claim was based on the investigation made by Congress.

Q. Théophile Landreau was the man who made the discovery?—A. Yes, sir; I understand so.

Q. And John C. Landreau was the man who furnished the money?—A. Yes, sir; I understand so.

Q. And he furnished it prior to 1867, when he was naturalized?—A. I do not know when he was naturalized; the committee find the fact that he was naturalized.

Q. Do you know Henry O’Connor?—A. No, I cannot say that I know him personally. I know there is such a gentleman connected with the State Department, and I very likely know him by sight, but I could not say.

Q. I would like to have you look at page 641 of the book I hand you (handing witness a copy of Senate Executive Document No. 79, 47th Congress, first session).

The WITNESS (after having examined the portion referred to). What is the question now?

Mr. BLOUNT. I want you to examine that portion of this report for your own information; I want you to see the paper contained there.

The WITNESS. This document appears to be signed by Henry O’Connor; and it states “that he was admitted to citizenship in the sixth district court of Louisiana, at New Orleans, on the 3d of June, 1867.” That statement is here.

Mr. BLOUNT. Now, will you please look below that.

The WITNESS. On the 15th of July, 1859, Théophile says, as appears here by quotation-marks:

“For my part, I accept you as my partner in this business, as well as the advice you give regarding it, and at the same time wait with great impatience the receipt of the five thousand dollars which you say shall be sent to me.”

In 1860, January 2d, it is stated that there is an acknowledgment of \$6,250 by Théophile from John.

Q. What is the date?—A. The 2d January, 1860. The next thing over here is as follows:

“First. That John C. Landreau had an interest”——

Mr. BLOUNT. No; I do not want that.

The WITNESS. The finding by Mr. O'Connor is that such interest existed in John C. Landreau long anterior to the date of the concession made by the government in November, 1865.

Mr. BLOUNT. Yes; that is true.

The WITNESS. The next thing is——

Mr. BLOUNT. That is all I want, unless you want to read more of it yourself. I just wanted to call your attention to that report, and ask you if the facts in that report were true; if you regarded, on that report, that that was such a case as required the intervention on the part of our government. If those facts are true, is it not manifest that John C. Landreau and Théophile Landreau were both French citizens at the time of the assigning of this claim against the Peruvian Government?

The WITNESS. If John C. Landreau was naturalized in 1867, of course he was not an American citizen until that time; and if the claim originated earlier, at the time of its origin they must have been French citizens. But what other facts there may be upon which the opinion of the committee and of the House of Representatives, and of Mr. O'Connor, and of the State Department are based, which make that a claim, one-half of which is owned by an American citizen, I cannot now state.

Mr. BLOUNT. I am not going into that report at present. I have no objection to your finally stating all you wish in reference to it.

The WITNESS. You are examining me with reference to the merits of this claim, and I have stated that my opinion was based upon the results reached by Congress, and from the perusal of its report, rather than from a perusal of this matter which precedes it, and upon which the report is founded.

Q. Well, this is news to you, is it not—this report of Mr. O'Connor's of the facts?—

A. It is not news to-day—not wholly. I have seen in your examinations here questions asked if some witness did not know that Mr. O'Connor had reversed himself, and thought differently from what he did when he gave the report.

Q. Did you know these facts at any time during your relation as counsel?—A. No; my mind was not called to that specifically. My opinion was based upon the report of the House of Representatives.

Q. I understand that, but I want to know whether or not you had any knowledge of this paper?—A. I do not know whether I ever read it or not. It made no impression on my mind, because in the report of the law officer, Mr. O'Connor, notwithstanding everything he states there, his conclusion was for the validity of the claim; and I am not prepared to say that I should think that it was utterly impossible for a man who was a French citizen when his right of property was derived, and who subsequently became an American citizen owning his property at that time, was not entitled to protection in his claim to property, although the title was derived anterior to his naturalization. It seems to me that is whittling American citizenship down to a pretty fine point, if his property cannot be protected after he is a citizen because it was derived before he was a citizen.

Q. Do you think a citizen of Great Britain, having a claim against that government, can emigrate here and invoke the aid of this government against Great Britain to collect that claim?

The WITNESS. After naturalization?

Mr. BLOUNT. Yes.

A. If you mean property that he owned in Great Britain prior to his naturalization, I think he can; and if he cannot, I would not care to be an American citizen.

Q. You supplement my question and then answer it. I did not ask the question that you answer. I asked the broad question whether or not you think that a citizen of another country can leave his own country, having a claim against that country which it has refused to pay, and after leaving that country and becoming naturalized in another, and asking for the interference of the new government to compel his former government to pay the claim, whether such a right could be asserted?—A. Yes, sir.

Q. Did you understand Mr. Blaine to occupy such a position as that?—A. The question never was raised.

Q. I thought it was raised in reference to the Cochet claim?—A. Not the question which you put. You asked me if a man—a citizen of Great Britain—owning a claim or property in Great Britain, comes to this country and is naturalized, if he may claim American protection so far as property owned before his naturalization is concerned, and I say I think so. The question in regard to the Cochet claim was quite a different question. The claim originally against Peru was in favor of a Frenchman. The Frenchman left a natural son who was a citizen of Peru, and by his identification, his baptism, and by will, it is claimed by the present owners of the Cochet claim that this

young man, a Peruvian citizen, became entitled to whatever his natural father owned, and that he, being a Peruvian, sold his claim to an American. Now that American comes in and claiming under that assignment of a chose in action asks for the protection of the American Government for the claim. That is quite a different state of affairs.

Mr. BLOUNT. Yes, that is; but it is not an answer to my question.

The WITNESS. I think it is, with all respect; I think it is an exact answer to the question put by you.

Mr. BLOUNT. Yes; so you do. But I was asking as to a principle in connection with the Cochet claim. You and Mr. Shipherd were with Mr. Blaine and having a discussion, and a discussion of that very person, and that is what I was asking. I did not mean for you to state the facts in regard to the Cochet claim, but you had a discussion in which I understood the department to announce a different principle.

The WITNESS. Mr. Blaine upon this statement of facts made by Mr. Shipherd—

Q. I am not speaking of his opinion of the Cochet claim; I am speaking about the principle of a citizen of a foreign country having a claim against that government, and becoming a citizen of another country?—A. No, that is not the point, with all respect. It is with regard to a citizen of a foreign country having a claim against his own country and assigning that claim to a citizen of our own country who holds thereby a chose in action.

Mr. BLOUNT. You are talking about the Cochet claim and I am talking to you about a different matter.

The WITNESS. Very well, I will try and understand you then.

Mr. BLOUNT. You have already given your opinion in regard to that proposition and therefore I will not renew it.

The WITNESS. I would be glad to be sure that I understand myself, and that we understand each other.

The CHAIRMAN. I think Mr. Blount referred to the argument held with Mr. Blaine, and Senator Blair was about to give his version of what took place with Mr. Blaine.

The WITNESS. That, as I understood, was the position Mr. Blaine took.

Mr. BLOUNT. And in connection with the Cochet claim.

The WITNESS. There was no particular discussion, and no dispute arose, with reference to the Landreau claim.

Mr. BLOUNT. The object I had in asking the question was, that the committee might see what purpose I had in view, which was to apply that principle to the facts in connection with the Landreau claim, as approved by Mr. O'Connor.

The CHAIRMAN. I understood that Mr. Blair was desirous of explaining his answer further by reference to his interview with Mr. Blaine.

Mr. BLOUNT. We have had it so many times, that I do not care for that; still, I do not object if Mr. Blair wishes to state it.

The WITNESS. I will not state it again, then.

By Mr. BLOUNT:

Q. On page 643 of this book is a communication from Mr. Gibbs to Mr. Evarts, in which I find the following, among other things:

“April 2, 1872, No. 34. Mr. Brent informs Mr. Fish that the French Government had ordered its minister to hold no further communication with Mr. J. Théophile Landreau.

“May 1, 1872, No. 31. Mr. Fish to Mr. Brent, answering No. 27, and requesting that Mr. Brent would not take any further steps in the matter.

“July 28, 1874, No. 92. Mr. Fish to Mr. Thomas, referring to dispatch from Mr. Thomas of July 16, 1873, says that it is one of the class of claims of which it is the settled practice of the United States Government not to interfere beyond the exercise of its good offices; but on examination the department has reached the conclusion that the claim of Landreau is entitled to some consideration, and therefore Mr. Thomas is authorized to make use of his good offices unofficially with the Peruvian authorities on behalf of Landreau to secure a speedy investigation and adjustment of the claim, also to keep the department advised.

“August 5, 1874. Mr. Thomas to the minister of foreign affairs, No. 87, inclosing a protest of Landreau to the minister of the treasury, that, in so doing, Mr. Thomas states that he is not acting under instructions from his government, nor prepared to make a demand for the claim.”

Had you read these several communications at any time during your connection with the Peruvian Company?—A. I do not know; I am not sure. I do not think I had studied them with care.

Q. In this same letter I find the following:

“October 13, No. 183. Mr. Thomas to Mr. Fish, inclosing copies of six letters and translations in support of Mr. Landreau's claim.

“Mr. Fish to Mr. Thomas, No. 108, November 5, acknowledging receipt of No. 133, of

October 13, remarks on the character of the claim, it being merely an implied contract, and that the department did not regard such questions as of an international character, and informing Mr. Thomas that his course must be limited to unofficial good offices."

Did you know anything of that statement?—A. I don't know whether I did or not. As I have stated, my idea of the Landreau claim was based upon its adjudication by the House of Representatives.

By Mr. RICE:

Q. Did you understand that the claim had been adjudicated?—A. Yes, sir; adjudicated so far as the opinion of Congress was concerned, and sent to the State Department as one which might properly be called, and should be called, to the attention of Peru, for the purpose of getting a fair trial or hearing for it.

Q. Then there had been no adjudication upon it at all except that it had been recommended that it should be looked into; that is all?—A. The House of Representatives had made a report and it had been a favorable one. It had passed the House, but in the Senate it had not passed. It failed there, I understand, because it was considered to be a matter wholly within the discretion of the Executive Departments and not for the action of Congress at all.

By Mr. BLOUNT:

Q. On page 648 I find the resolution of Congress, which is as follows:

"Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That the petition of John C. Landreau, the report made thereon by the Committee on Foreign Affairs, and the accompanying papers, be transmitted to the Executive Department, with the request that the President take such steps as in his opinion may be proper, and in accordance with international law, to secure to the said John C. Landreau a final settlement and adjustment of his claim against the Government of Peru; and that, if in his opinion it is proper to do so, the President invite the Government of France to co-operate with the United States in his behalf."

Now, is that what you call an adjudication, an approval of the claims by Congress?—A. I did not use the expression "adjudication" in the sense of a judgment at law. It was the favorable opinion of the House of Representatives I referred to, and, in that sense, it is an adjudication in the opinion of the House (and from the manner in which it was considered in the Senate, though it did not pass that branch), that the claim was entitled to the good offices of this government. That is certainly an adjudication.

Mr. BLOUNT (reading):

"ACTION OF THE HOUSE OF REPRESENTATIVES.

"FEBRUARY 21, 1880.

"Mr. HILL. The Committee on Foreign Affairs, to whom was referred the petition of John C. Landreau, a naturalized citizen of the United States, for the aid of the Government of the United States in the furtherance of his claim against the Government of Peru, have directed me to submit a report, accompanied by a joint resolution, which I hope may be put on its passage now. It does not involve the expenditure of a single dollar, but simply grants in behalf of a citizen of the United States the good offices of the President and Secretary of State in the settlement of a claim against a foreign government. I hope there will be no objection to the passage of this joint resolution.

"The joint resolution (H. R. No. 219) was read a first and second time, was ordered to be engrossed for a third reading, was accordingly read the third time, and passed.

"Mr. HILL moved to reconsider the vote by which the joint resolution was passed; and also moved that the motion to reconsider be laid on the table." Do you understand that that was an adjudication of the claim by the House of Representatives?—A. I understand it was an adjudication of the fact that the claim was entitled to the good offices of the government, and that is all that has ever been set up by anybody so far as I know, and all that the government has ever undertaken to do.

By the CHAIRMAN:

Q. I do not understand that you use the term adjudication in its judicial sense?—

A. I do not. I understand that this claim would go the Peruvian tribunal and be adjudicated in the proper sense. Peru declined to furnish such a tribunal, and has thus far. If she continued to do so, I supposed, this being an American citizen, that sometime, in some proper way, the American's right would be protected. Just what might come of that in the future I did not know; it might not be necessary. It was supposed that all that could be disposed of by this agreement with Peru that Mr. Shipherd's commissioners could make.

Mr. BLOUNT (reading):

“ACTION OF THE SENATE.

“FEBRUARY 24, 1880.

“Mr. EATON. I am instructed by the Committee on Foreign Relations, to whom was referred the joint resolution (S. R. No. 14) for the relief of John C. Landreau, to ask to be discharged from the further consideration of this matter. It relates to a contract between a citizen of the United States and the Peruvian Government, and it is the opinion of the committee that it is a matter entirely within the power of the Executive Department.

“Mr. VOORHEES. I ask that it be placed on the Calendar with the adverse report.

“The VICE-PRESIDENT. The Chair hears no objection to that request, and that order will be entered.” Now, is there any favorable action in the Senate in reference to it that you observe from reading that paper? I am not asking any opinion outside of this.

The WITNESS. You ask me, then, for an opinion upon unstated facts?

Mr. BLOUNT. I ask your opinion upon that paper?—A. You ask my opinion upon a partial statement of the facts in the case. This, on the face of it, so far as I see, does not express an opinion favorable or unfavorable to the claim.

Q. Did not Mr. Voorhees move that it be laid on the table with the adverse report?

—A. Yes; to be placed on the Calendar. It was an adverse report, on the ground that it was wholly in the discretion of the State Department, no Congressional action being proper.

Q. Then there was no opinion expressed by the Senate in that report?—A. Only that it was a matter within the discretion of the State Department upon the record. But I will say in this connection that I know, and I think the committee knows, from very good evidence, that the chairman of the Senate committee believed that it was a just claim, and one which ought to be paid or adjusted by Peru, and that the Senate committee agreed upon the merits of the matter entirely with the House committee, and only adopted the resolution and disposed of the matter in the way they did because they thought it was already properly in the hands of the Executive Department, and should stay there.

Q. Do you mean to say that Mr. Eaton held, and the Senate committee held, that it was within the power of the Executive and its duty to make a demand for the payment of this claim?—A. I did not say that.

Q. I ask you if you mean to be understood so.—A. I do not mean to be understood so, because I have not said so.

Q. I do not care what your reason is; I am trying to get at your opinion. You have used the word “adjudicated,” and I have read the record in order that you might see what the adjudication was. Now, you supplement it by the opinion, which I know nothing about, of Mr. Eaton, and I was asking you whether you wanted to be understood in that way. I do not understand that you said so, but we might infer it, and that is the reason I asked the question.—A. Very well; I think I understand the matter as I desire to understand it now.

Q. When did the Cochet claim originate? [Addressing the committee.] I should like to know the disposition of the committee in regard to my continuing this examination.

Mr. RICE. Do you expect to get through to-day?

Mr. BLOUNT. I do not think I can, unless the committee wish to hasten it. I am willing to conclude at any time, but there is a branch of this matter that I feel very much disposed to inquire about.

Mr. RICE. If I am allowed to ask a question it may prevent my occupying any further time with the witness hereafter.

The CHAIRMAN. I will suggest, having consulted with the committee, that after Mr. Rice has propounded his question we adjourn until to-morrow morning, as there are some matters to come before the committee in executive session. Mr. Rice will proceed.

By Mr. RICE:

Q. In your first statement you said you were convinced of the justice of this claim?

—A. Yes, sir; I did not mean to say that I was convinced of the justice of these claims as to their amount, but that there was justice at the bottom, I think was my expression.

Q. I would like to know upon what you based your judgment, as a lawyer, that there was anything in the Cochet claim against Peru. You heard ex-Senator Boutwell's opinion read, which we never have yet been favored with. Mr. Shipherd told us that no lawyer ever examined his claim without pronouncing in its favor, and as some of us here claim to be lawyers we would like to know upon what good lawyers based a judgment favorable to the Cochet claim against Peru?—A. I will not assume that I am a good lawyer, and can hardly claim to be able to give instruction to the committee in the matter of law.

Q. But you read Governor Boutwell's opinion on this subject, and are able to tell us about it?—A. I do not think I ever read Governor Boutwell's opinion. I remember seeing it, and understood that it was in favor of the Cochet claim, but I think he wrote a supplementary opinion upon this doctrine of the international assignability of a chose in action, which I understood was sent to the State Department (I do not know that it was), maintaining that doctrine. That, I think, was after the discussion with Mr. Blaine. I know it was shown to me after that. I think there was a citation of authorities and positions taken maintaining that view. I have only to state that I thought there was justice at the bottom of these claims. If the committee want my opinion as to why I believed they were just claims, not in amount but in their nature and in the equity between the nation and the individual, I would give those reasons very gladly.

Q. I should like to know any good reason why this was a just claim against Peru?—A. But the last part of your question seemed to call for my opinion upon a legal and technical ground more particularly as a lawyer; how a good lawyer would look at it.

Q. And therefore you would be able to afford information to us?—A. Well, the guano of Peru was practically worthless in 1833.

Q. Was it not worth just as much then as it is now?—A. It has been used since then.

Q. Was it not used before that?—A. Not to any degree; not utilized by mankind.

Q. Has it not always been used in Peru as a fertilizer?—A. Very little relatively; but it was never introduced to the world, and I understand that Cochet made chemical discoveries which bore upon its utilization; that he took great interest in it, and exerted himself for a great length of time to effect its introduction as a commercial article to the world at large, and that really through his efforts, more than the efforts of any one man I suppose, guano became known to the civilized world as a fertilizer, and what for at least three centuries had been known to European populations to exist, and had been used in this trifling way that you refer to in Peru, but never as an article of commerce to any extent, became, in consequence of his labors and discoveries, the source of more wealth to Peru, and produced for her a greater revenue than she received from her mines and from all other sources whatever; and that he expected, and the Peruvian Government recognized that he was entitled to, some compensation, and his claim was acknowledged by the government, perhaps not to the extent which he claimed. But at all events there never has been, as I understand, any denial by the government that there was something due to this man for this great benefit that he had conferred upon the Peruvian people. It is for that reason, nothing ever having been paid to him or his heirs, that I think it is only just to say that there is equity at the bottom of his claim; and I have no doubt that there is a large amount that ought to be paid by Peru, if she is not insolvent, as a matter of right, if she ever comes to have the ability. In regard to the Landrean claim, the Landreans discovered large tracts of guano in remote wildernesses, in places unknown to the government, and thereby rendered a very great service to the government.

Q. That is the difference between Landrean and Cochet, that Landrean discovered tracts of guano before unknown, and Cochet analyzed guano which had been known before. He did not claim to discover any new deposits of guano, but merely to have analyzed it and made known to the world its constituent parts?—A. And, also, to have contributed largely to its introduction as a fertilizer; and, further, I should say in regard to Cochet, that I understood, and understand still, and I do not think it is controverted, that he discovered a new process of converting the nitrate of soda into nitrate of potash.

Q. The Peruvian Company does not own that?—A. Yes; I supposed so. I supposed that any claims Cochet had against the Peruvian Government descended to his heir, and I supposed passed to the Peruvian Company. I have always understood that that was the claim.

Mr. RICE. I am informed that Mr. Blount will go over this branch of the examination, and therefore I do not desire to go further into it.

The WITNESS. You asked me in regard to the Landreans, and I have stated, substantially, that they made these extensive discoveries, contributed great wealth to the country, and have received no compensation. What amount should be paid them is an open question, but that something should be paid I think is, to one's sense of justice, quite apparent, assuming these facts.

The CHAIRMAN. As I understand, one was the discoverer of quality and the other of quantity.

The WITNESS. Yes, the discoverer of quality in the effort to make a market for it of which the Peruvians could avail themselves and introduce it where Cochet was known and they were not known, and this discovery of the secret of nitrate of soda being used in the manufacture of gunpowder.

Mr. RICE. By referring to the assignment on page 672, from Gelacio Cochet, the son, to your company, you will find that it is only relative to the use and application of the guano for agricultural purposes, the right to use it.

The WITNESS. I do not know whether that is all or whether that one instrument is conclusive of the entire rights of the company.

Mr. RICE. I so understood Mr. Shipherd's testimony.

The WITNESS. Well, I cannot say as to that. I always understood that his rights were based largely on his equitable claim for making the nitrate-of-soda discovery.

Mr. RICE. I have put these questions, supposing that Mr. Blount had left the subject and was going to another branch, but it seems that he has not, and therefore I do not desire to ask you any more.

The CHAIRMAN. The hearing stands adjourned until to-morrow at 10 o'clock a. m.

WASHINGTON, D. C., May 6, 1882.

The committee met at 10 o'clock a. m.

Hon. HENRY W. BLAIR appeared, and his examination was resumed.

By Mr. BLOUNT:

Question. Do you know the amount of Chilean indebtedness?—Answer. No. I suppose all that can be derived from the almanacs and registers and other authorities of the day, I do not know what it is. I have understood that the amount of their war expenses was from \$30,000,000 to \$35,000,000, as estimated by themselves. I think that is stated in one of the dispatches either of Mr. Christiancy or of Mr. Hurlbut.

Q. I have here the American Almanac for 1882 in which I find this statement: "The national debt of Chili in 1879 amounted to \$79,452,490, mostly contracted in England for the construction of railways. The revenue for 1879 was \$27,693,087; one-half derived from customs and monopolies; and the expenditure \$24,777,360. The commerce of Chili is considerable, the exports being \$37,771,440 in 1878, and the imports \$22,740,000, nearly one-half the commerce being with Great Britain."

The CHAIRMAN. What book is that taken from?

The BLOUNT. That is from Mr. Spofford's almanac.

The CHAIRMAN. Of what year?

Mr. BLOUNT. For 1882.

By Mr. BLOUNT:

Q. What is the population of Chili?—A. I have seen it variously stated. I was informed by an American gentleman last autumn, who has spent many years in Chili, Peru, and Bolivia, and who knows these countries better than any other gentleman I have ever met, that the population of Chili was about 1,800,000. I think it is estimated higher than that usually.

Q. This work I have puts it at 2,400,000, besides about 50,000 Indians.—A. My understanding is that it is usually estimated somewhat higher. I think the real population is about 1,800,000.

Q. What do you understand to be the population of Peru?—A. The estimates as we see them, possibly the census as published, is about 3,000,000, I believe; but the same source of information before alluded to would fix the population of Peru at about 2,500,000, of whom about 2,000,000 are Indians or descendants of the original Peruvians. The balance are mixed with the Spaniards, and there is some mixed negro population there also.

Q. The American Almanac, which I have referred to, puts the population at 3,050,000.—A. That is about my recollection of the population.

Q. What is your recollection of the population of Bolivia?—A. I am not able to state the population of Bolivia; I think it is less than that of Peru, however.

Q. This same authority puts it at 2,080,000. Now, we have just had your opinion, and the information contained in this authority, as to the foreign indebtedness of Chili. I will ask your information as to the foreign indebtedness of Peru.—A. I have seen that stated at from \$250,000,000 to \$300,000,000.

Q. This same authority which I have referred to has it \$281,340,000.—A. I have seen it variously stated from \$250,000,000 to \$300,000,000, and the foreign debt, I understand, is substantially the entire national debt.

Q. Has there not been a very large amount of money expended in the construction of railroads in Peru?—A. Yes, sir. I do not know the exact amount, but there are, at least, 1,200 miles of the railroad system of Peru (I think nearly 2,000 miles of its railroad system, which is not yet completed), based on foreign capital mostly.

Q. What do you think of the correctness of this statement: "In 1879 there were 1,750 completed miles of railway, and 600 more in construction, Peru having gone into the most extensive railroad building in proportion to its inhabitants, of any country"?—A. I have no doubt that is substantially correct. Perhaps it ought to be added in regard to the Peruvian railway system that it has been mainly constructed by Americans and under the direction of Americans.

Q. I find this statement in the Statesman's Year-Book for 1882, which I will read to you and ask your judgment upon: "Peru has a considerable public debt, divided into an internal and external. The internal liabilities are estimated at £4,000,000, exclusive of a floating debt of an unknown amount, greatly increased by large issues of paper money, made in 1879 and 1880 to carry on a war against Chili. The total of these issues was estimated, end of October, 1880, at 35,000,000 soles or £7,000,000. The foreign debt is made up of three loans contracted in England from 1869 to 1872:

Foreign loan.	National amount of issue.
Pisco to Yca railway 5 per cent. loan of 1869.....	£290,000
Railway 6 per cent. loan of 1870.....	11,920,000
Railway 5 per cent. loan of 1872.....	36,800,000
Total.....	49,010,000

"The 5 per cent. Pisco-Yca Railway loan of 1869 was issued at the price of 71, and the 6 per cent. loan of 1870 at the price of 82½. The loan of 1872 for the nominal amount of £36,800,000, was issued partly to the amount of £15,000,000 for the construction of railways and other public works, and partly to the amount £21,800,000 for the extinction of former debts. The two loans of 1870 and 1872 were secured on the guanodeposits (now, 1882, in possession of Chili) and the general resources of Peru.' This authority states that the railroad building in Peru has come from English capital, the great body of it. Do you think that is incorrect?—A. No. I think that is correct so far as the capital is concerned. I think the construction has been mainly under Americans, Mr. Meiggs and his associates, very largely so, and I have no doubt of the substantial accuracy of the statement in regard to the debt.

Q. The money, then, is British capital?—A. Very largely, I understand.

Q. Is it not mostly so?—A. Yes, sir; mostly so, I understand.

Q. Do you know anything of the trade between Chili, Peru, and the United States; I mean the amounts?—A. I cannot give the amounts in figures; I have no doubt you have the data there correctly. It is comparatively small with both countries.

Q. How much is it with Great Britain?—A. As compared with the trade of the United States very much larger, probably four or five times the amount, and may be more.

Mr. BLOUNT. I will take your general statement then, without going into the figures.

The WITNESS. If it is thought of any importance I would be glad to have you put in the figures. I can only say, generally, that it is very much larger. There is no doubt that English influence is very strongly established, commercially and pecuniarily, in South America already, and is increasing there, so that her political influence will become paramount in consequence of it. The existence of these facts has had great influence on my apprehensions that very soon South America would belong to Great Britain instead of to the United States, or instead of existing in the form of independent countries in accord, so far as policy is concerned, with that of the United States.

Q. There is no dispute, and has not been any, as to the *bona fides* of those bonds of the European bondholders owned by British creditors, has there?—A. I think not, and I do not think there ought to be, so far as I have knowledge.

Q. Are you familiar with the operations of our Navy?—A. I have not any knowledge of its recent movements, except what I see from time to time in the journals of the day.

Q. Well, generally we have five squadrons located with reference to our foreign trade, have we not?—A. Yes, sir, I suppose so; a squadron corresponding very much in capacity and warlike force to the trade itself.

Q. And the trade is small?—A. Yes, sir; the trade is small and growing smaller, and is likely to for many years.

Q. You spoke in your testimony of Chili as being a European province more than any other of the South American states. In what sense do you mean to speak of Chili as a European province?—A. I mean it in this sense: that her commercial connections are almost exclusively with Great Britain and France, and to some extent with some other European powers, such as Germany and Italy; that she has been very largely, as I understand it, at least, aided by European sympathy and European capital and officers, and, possibly, to some extent, volunteers in the late war; that as the interests and the sympathies of the United States have been more closely drawn in the direction of Peru, on the other hand, the same is true as between European influences and Chili, and that the success of Chili thus supported is practically the success of a European influence as against an American or a North American influence.

Q. So far as the trade with Chili is concerned, is not that true generally in South American States?—A. Yes, sir. I would be glad if that might be reversed.

Q. You have been making a general statement of the aid given by Great Britain to Chili in this controversy with Peru. Have you any facts showing that Great Brit-

ain has done any improper thing in connection with that movement?—A. I have never intimated or meant to intimate that. I suppose Great Britain has done, through her citizens, precisely what the Peruvian Company would have done, so far as the United States is concerned. I believe that the English bondholders having commercial and pecuniary interests there, have been looking after them, and calculating upon the future, and in every way, by sympathy and material help (not furnished publicly or ostensibly, but nevertheless actually furnished) they have been aiding the Chilians as much as they could.

Q. That is a supposition, is it not?—A. O, yes, sir; I have no personal knowledge of it. I think that is a part of the common knowledge of mankind, however. I do not think the journals of the day have indicated anything else. That has been my understanding, from what attention I have given to the progress of the war through the ordinary channels of intelligence.

Q. There has been a great deal of partisanship shown in the press in regard to the Chili-Peruvian war, has there not, and statements have been highly colored, have they not?—A. A large part of the press of this country appears to me to act under the influence of foreign interests. You take the majority of the Metropolitan press of New York; to my mind it is in the interest of Europe rather than America, and I think it quite palpable to a man who is really and intensely an American, that a large part of the press of this country is conducted in the interest of foreign countries, so far as this class of questions is concerned. I account for a great deal of the vituperation, and slander, and accusation, and general nonsense that is in the press, on that theory. I treat them, so far as I am concerned, as accusations from across the water. I think any man who is on the side of his country is liable to be assailed in that same way.

Q. Do you mean, so far as the New York press is concerned, that its inclinations are to free trade? Is that what you mean?—A. That is so, to some extent. Of course, I do not mean that the men who manage these institutions (for a paper comes to be an institution) are acting corruptly. I do not mean that the men who conduct them are bribed, or anything of that sort, but I think the influences that surround them, the general policy on which they live, and the effect certainly of what they bruit abroad on the country is against the country largely, so far as these questions are concerned.

Q. Are those the papers you get your information from about the aid of British capital in furthering the contest of Chili as against Peru?—A. Yes, sir. Some of the papers are perfect models of accuracy, and show a wonderful extent of information. I am not saying anything against the papers any more than is said against any institution or any class of thinkers who happen to disagree with one. I suppose the gentlemen who conduct them are personally honest, and very likely present things which from their standpoint would seem to be for the general interest of their country.

Q. You spoke very significantly of the presence of British vessels on the southwestern coast, I thought.—A. I stated the fact, but I did not state it as anything more than as certainly making it appear not singular that American vessels should go there too.

Q. Are there any more vessels of Great Britain on that coast now than have been there for ten or fifteen years?—A. I do not know that there are. They are more powerful; perhaps there are no more powerful vessels than theirs in comparison with the other navies of Europe. There are some seven or eight war vessels belonging to Great Britain, as I understand it, in the Chilian and Peruvian waters.

Q. I understand you to say they are there now, but is that anything unusual; do not our own vessels go to various points there every year?—A. O, yes; I take it they do.

Q. And do not the British vessels do the same thing?—A. O, yes; I suppose if we sent the half of all our Navy there it would be able, in a naval contest, to acquit itself with the British vessels, though I do not know how that is.

Mr. BLOUNT. You are making an argument, and I am simply asking questions.

The WITNESS. You assumed that I made an argument in my statement that I am not conscious of. I was asked to explain certain language that I used about ships of war going to Peru.

Mr. BLOUNT. I did not ask a question; I called your attention to it.

The WITNESS. And I was making that explanation. I indicated that it was no marvellous thing that American vessels should go there, and I stated that Great Britain had a fleet there already.

Mr. BLOUNT. If you have finished your explanation I will put my question.

The WITNESS. My explanation was an answer to a previous question or implication in a question. I recognize, Mr. Blount, that your questions sometimes require an explanatory answer; there is more in them than appears on the surface sometimes.

Mr. BLOUNT. If you will allow me, when I have gotten through a question I think it is your right to make as full explanations as you see fit; I am not trying to cut you off either.

The WITNESS. I do not think you are; I did not understand it so.

Q. Do you know that there is any greater demonstration of British vessels on that coast than is usual?—A. No, I do not.

Q. Great Britain has a large trade there, and it is a very natural thing for her to do as we do, and to locate a portion of her naval vessels there, with reference to that commerce, is it not?—A. To some extent. From my previous answer I would not have you suppose that I think in time of peace, when there is no disturbance in these South American waters, that Great Britain would keep the squadron that she has now there or which she has been accustomed formerly to have there. She would not, according to my knowledge and belief.

Q. What knowledge have you on that subject?—A. I have only general knowledge. I cannot say but what she has; but I have no doubt that during the period of war, when her interests were more endangered, she would naturally keep more vessels there.

Mr. BLOUNT. That is argument, isn't it; you do not mean to say you have any facts?

The WITNESS. No; and my previous answer was not based upon any assertion that I had facts.

Q. Have you any knowledge of the number of vessels that the British Government had there eight years ago?—A. I have not. I do not know that she had any there then.

Q. You do not know but what she had a larger force there eight years ago than she has now?—A. I do not.

Q. Is there any source of information from which those facts can be obtained?—A. That information could possibly be obtained from the British legation here and of course from the records of the admiralty office in London. But I do not know where you could refer for data in this country as to the exact number of ships that were there at any time.

Q. Is it not true that the English Government does not publish the movements of its navy at all?—A. It does not quite as extensively as we publish the operations of our State Department, I think. I think it is true that Great Britain exhibits a vast deal of common sense in the management of her diplomatic affairs. She has all the information she needs but does not babble everything to all mankind so as to defeat her own purposes.

Q. The European interest which you consider hostile to American interests then, is made up of a large trade that Great Britain has down there, is it not?—A. That is one of the leading elements, and *the* leading element, because I think that industrial and property interests precede, as a rule, political interests, and that where the property interests of one nation become predominant in another, if that nation has the power ultimately she will come to have the political control. It almost necessarily follows, in order that those property interests may be protected, for we all know that property interests nowhere amount to anything unless, in a last resort, they are protected by a political organization.

Q. Is it not true that the most of the public works that have been built there, the railroads, &c., have been constructed by British capital and that they owe for them now?—A. Yes, sir, I think so.

Q. Is not that all legitimate?—A. Entirely so.

Q. It is not at war with the Monroe doctrine, is it?—A. Absolutely; I mean by that, absolutely at war with the Monroe doctrine in its tendency and effect.

Q. How would you propose to enforce the Monroe doctrine as against that?—A. Well, you are getting a vast amount of useful information, and I hope it will be utilized for the good of both parties and for the government. There have been some blunders made in this country because certain views have not been followed. If you will repeat the question, as to the precise point indicated, I will endeavor to answer it.

Q. I ask you how you are going to enforce the Monroe doctrine against British people trading down there in South America, if that is a violation of it?—A. I would let them trade as a rule, all that they choose to. But when a policy has been pursued by this country which has resulted in the commercial relations between Europe and these South American republics becoming vastly more important than the same relations between those countries and ourselves for a long series of years, until our political predominance and our political affiliation with those republics has become endangered, not to say practically destroyed, but on the eve of destruction, when an opportunity should come, as it came, and as it was presented by this collision between Peru and Chili, to have regained everything by a really peaceful act in the interests of humanity, dictated by international law and the obligations that exist among men, for us to have recovered everything, and to have violated the rights of no European whatever, I would have embraced the opportunity; and I think that if we had (or if we should, for the opportunity has not gone by any means; it is like one of old who sleepeth, however), if the opportunity which then and, as I think, now exists to put Peru upon her feet again; to provide for this Chilean indemnity, and thus keep Chili at home; to prevent her territorial enlargement; to prevent any increase of her political (that is to say, English or European) influence by expanding and making her the extensive power of the South American continent, and, at the same time, by introducing the Anglo-Saxon, something in the same way that the Anglo-Saxon was introduced to the Indies by the

East India Company, if you please, though not by war by any means, for there is no occasion for that as this matter stood; to have introduced, as I say, the Anglo-Saxon, and Anglo-Saxon institutions, and the Anglo-Saxon influence, as could have been done by 5,000 or 10,000 or 50,000 men, who would readily have gone there from California and from other parts of our country—vigorous and forcible men—and by working the resources of Peru to have restored her government, and to have furnished that government with the means of becoming self-supporting, and, at the same time, have given to it the moral and, if necessary, the physical support of the employés of that company; to have at the same time effected a loan through the operations of this company, who would have taken care of the foreign bondholder and made his pay sure, which of course was not sure with Peru in the situation she has been, and could only be made sure by some power taking possession of Peru, as Europe has through Chili to-day; I say, when the opportunity was presented to have done all that, by allowing American citizens to have gone ahead in accordance with an already established policy, I would have embraced that opportunity. I would have kept the peace, and I would have put Peru in the condition of developing into a strong, vigorous ally of the United States in peace and, if necessary, in war, and she would have become that sort of power that, in an alliance of friendship with the United States, would have preserved the peace of both continents, as I believe, and possibly have controlled the canal, which I now look upon as having passed into the possession of foreign powers. I think, unless there is a reversal of the existing policy and tendency of this country, it will certainly be quite as much a foreign canal as it is an American canal, and I believe that in the future, unless wars effect it, compared with which this little affair down here in South America is like a squabble between two boys on the street, and which would be like a conflict of tornadoes, unless in that way we recover possession and control of that canal in the future, which is indispensable almost to our own commerce and to our own predominance, I think it is lost.

Mr. WILSON. Mr. Chairman, I do not want to disturb this very pleasant little colloquy which is going on here, but I do beg to say that we are now drifting too far beyond the range of the inquiry before us. I see that Judge Blount this morning has been aiming, and properly so, to get at the comparative resources of these countries and to take a sort of bird's eye view of the question, and I think that is all proper. But I think now the examination has drifted too far away from that, and I do not think anything can be gained by this wide, extended range we are now taking. I think we are now allowing it to become too latitudinous.

The WITNESS. I think Mr. Wilson will recognize the act that I do not grow discursive unless invited to become so.

Mr. LORD. I quite agree with Mr. Wilson. It seems to me that we have included the whole continent of South America in our inquiry, and if we can get back somewhere near the scope of the resolution under which we are acting I can see that there will be a possible completion of this investigation.

Mr. WILSON. These matters are all of interest, but having accomplished the purpose in getting this information, to go beyond that point I do not think it is at all necessary.

Mr. BLOUNT. I am perfectly willing to turn this investigation over to other members of the committee. Without explaining or endeavoring to show where it was drifting, I understand these remarks as criticisms upon the course of my examination.

Mr. LORD. My remark was not in criticism of your examination. It was a criticism upon the drift; that was all.

Mr. BLOUNT. I cannot restrain the drift. I would be glad if it would be otherwise.

Mr. BELMONT. It seems to me that these questions of Mr. Blount's are very pertinent, because they all refer to the plans of the Peruvian Company, which seemed to be very extensive, and, as I understand it, there was some idea of a protectorate, was there not, Mr. Blair?

The WITNESS. Not until towards the last of my connection with the company; not until the month of November have I any recollection of hearing that discussed, or any expectation of it.

Mr. BELMONT. I think that in itself would be sufficient to render this portion of the examination important.

Mr. WILSON. I think before the subject is left I ought to make a further explanation.

Mr. BLOUNT. I want to say this: Either this criticism goes to the witness or to the examiner. There is a general assent to it.

Mr. BELMONT. Not on my part.

Mr. BLOUNT. I submit to the will of the committee. If I am to be restrained I shall retire; that is all. If the remarks are directed to the witness, of course I have nothing to say.

Mr. WILSON. Mr. Chairman, Mr. Blount can have no reference to me in what he says, for I distinctly stated, that this morning he had established one or two very interesting facts—interesting to the committee and to the country—with reference to the relation of the various countries to Chili and to Peru, and to trade between those countries.

What I had in view when I made my remark was more in reference to the eloquent dissertation given by Mr. Blair in answer to a question propounded to him by Mr. Blount. I considered that the point sought to be established by him was pertinent and proper. Now that having been established and Mr. Blair having proceeded to give what would be his line of policy in the future looking to peace or war, the remarks I made had more reference to the answer that he was giving; that it did not seem to be responsive to Mr. Blount.

The WITNESS. Will you please state the question to which I was asked to make an answer?

Mr. BLOUNT. I do not want the witness to take any part in the discussion as to the admissibility of testimony.

The CHAIRMAN. The witness desired to explain his testimony, as I understand. It seems to me that for the last two days, on the part of all the members of the committee, the investigation has drifted more towards an examination of the South American policy of the government than as bearing directly upon the question whether any American minister was involved in any improper transaction. But I understood Mr. Blount to be running along in that line which, by common consent, we seem to have adopted.

Mr. BLOUNT. That was all.

The CHAIRMAN. And I did understand that the answer, in the main, was responsive to that general course of the investigation. But Mr. Blount has propounded his question and Mr. Blair has completed his answer. I do not think the committee desire to criticise the mode of examination.

Mr. BLOUNT. Then I will go on, because I admit, myself, that the investigation is a little outside of the exact wording of our resolution. But it has drifted in that way, and been permitted to drift, until the present time, when there seems to be a general voice against it.

Mr. RICE. This last question I think was scarcely in the line of Mr. Blount's other questions but was a collateral one that went out of the line of the regular examination, and drifted into the subject of the Monroe doctrine.

Mr. BELMONT. It seems to me, if I remember the witness's principal statement, that we will find this cross-examination is directly on that statement. There was something said about the Monroe doctrine in your original statement, was there not?

The WITNESS. I think so.

The CHAIRMAN. We can all see, logically, how this examination would naturally run into the question of a protectorate in Peru, with relation to American, British, and European interests and the policy of the government. But I have no idea that Mr. Blount intends to pursue that line, and I think we shall get along satisfactorily by putting the question and proceeding with the examination.

Mr. BLOUNT. Mr. Blair's statement was more voluminous than I desired. He desired to make it full, and he had a right to answer as he saw fit. If he went beyond what I wanted it was his right; that may have been perfectly correct.

The CHAIRMAN. The Chair certainly concurs with Mr. Blount.

The WITNESS. Can I now make an observation?

The CHAIRMAN. Certainly.

The WITNESS. It will be recollected that the question I was replying to was as to how I, Europe being still in possession of South America, would make effective the Monroe doctrine; and I took, perhaps, three minutes to explain that matter to the committee, prefacing my statement with what must have given to the committee the impression that I did not feel I was strictly under obligations to shed my light upon this subject. I think three minutes devoted to the general explanation of how I would enforce the Monroe doctrine in South America is not an excessive use of time.

Mr. BLOUNT. I desire to say that I do not think that my position as a member of this committee makes it proper for me to enter into a discussion of this matter with the witness. I shall pursue the examination.

Mr. LORD. I desire to say that we all know Mr. Blount well enough to know that he asks no question that is not clear and logical; but I suggest whether this is not going too far beyond the resolution under which we are acting, with all due respect to the witness and the examiner. In concurring with Mr. Wilson, I hoped that the answer might be restrained so as to cover the question without hampering either the examiner or the witness.

Mr. BLOUNT. I hope we will have a private session of the committee; I do not think this is a proper matter to be discussed in public, and I think we ought not to continue the discussion.

Mr. BELMONT. I merely want to say that I find in the statement of the witness that he uses this language: "This conviction has grown constantly stronger until now I believe that an injury has been done which, unless repaired by an immediate and emphatic change of the apparent policy of the last few months, will result in the permanent abandonment of the traditions of American international policy the reversal

of the Monroe doctrine," &c. Therefore, I think Mr. Blount's line of examination is entirely pertinent.

The CHAIRMAN. That agrees with what Mr. Blair has just said, in substance. Now if Mr. Blount will please put his question, we can proceed; we do not put any limitation on him.

Mr. BLOUNT. Very well; and I will make my questions short. [To the witness.] What was the amount of the Landreau claim as understood by the Peruvian Company?—A. I do not know what the Peruvian Company understood it to be, but Mr. Shipherd (whom I suppose you mean) I think placed the amount at \$135,000,000, that sum being made up of the value of the original property taken, with interest computed on it. I think that is the way it was made up.

Q. What was the amount of the Cochet claim as it was made up?—A. The original claim was the value of one-third of the guano, with interest. The original claim amounted to about \$400,000,000, with the interest, making in all about \$480,000,000, or substantially, as I recollect it, a billion dollars; of course one hundred million or two does not amount to anything in such a matter.

Q. Do you not think that Mr. Shipherd's purpose, as president of the Peruvian Company, was to get all of that out of Peru that he could?—A. I cannot say in regard to that. It is very clear, and always was to my mind, that he could not get a great part of it out of Peru if he would.

Q. Dr. Arizola, his agent down there, seems to have thought it was possible for him to do it, does he not? He wrote to him, and his letter we quoted yesterday.—A. I did not know that he had any agent down there, and Dr. Arizola's letter I knew nothing of until subsequently. You ask me for statements of his agent down there; I do not know that he had any agent there.

Q. I understood that you had answered that question, and I proposed to ask you another question. You have read this correspondence, have you not?—A. I have read a good deal of it.

Q. You have read Dr. Arizola's letter?—A. Yes, I have read that letter.

Q. The Camacho letter was sent to Dr. Arizola, was it not?—A. Well, a letter from some one was; I do not know whether from Camacho or Tracey.

Q. You know it very well; it is known as the Camacho letter. I do not want you to say who it was from, if you don't know, and I understand you to say that you do not. That letter was sent to Dr. Arizola?—A. I understand so.

Q. I ask you for your information as you get it from the correspondence; I understand you have none from the outside. That letter was to be presented by Dr. Arizola to President Calderon, was it not?—A. I suppose that Dr. Arizola, being a confidential friend of President Calderon, would naturally present it to him.

Q. Was he not the man Mr. Shipherd had to present his claims to President Calderon?—A. I do not know. I must answer that by saying that I do not know anything further than what the correspondence indicates.

Q. Certainly, and it is knowledge as to that which I am asking.—A. Very well, then, the correspondence speaks for itself.

Q. It certainly does.—A. I suppose that the information which Dr. Arizola had was communicated to President Calderon.

Q. Does not Dr. Arizola say to Mr. Shipherd, after President Calderon had been arrested:

"The latter, [that is Admiral Montero] will assume the command the moment the news of this infamous outrage shall reach him, and it is evident that by lending to him a strong hand on the part of the Government of the United States we may arrive at the desired solutions of all the questions of the war and at the restoration of internal order. Whatever you and your friends may do in this sense, will be a benefit to Peru and the victory of your own plans."

A. Yes; I remember that expression.

Q. Was it not the plan of Mr. Shipherd to get an acknowledgment of this large indebtedness from President Calderon to the Peruvian Company?—A. I do not know whether he expected to get an acknowledgment of that large indebtedness, if you mean by that the figures that he first gave in the claim, or not; I do not suppose it could have been.

Q. Did he ever present any other sum, or suggest any compromise in any of his correspondence which is published here?—A. Yes, he indicates that in his letter to the executive, as you will see by perusing it.

Q. Which letter do you refer to?—A. His letter to President Garfield, or his letter to General Hurlbut, in which he suggests that he would be ready to make any adjustment of these claims which it might be within the capacity of the debtor to make.

Q. I ask you whether there was anything of that kind in his correspondence which is published here.—A. I am speaking of his correspondence with the government itself or with General Hurlbut. I do not know that I can turn to the letter at present.

Q. I will not trouble you to do so just now; you may find it during the course of the investigation, and then you can refer to it.—A. I will state, in a general way, that

Mr. Shipherd indicated, in his early letter to General Hurlbut or to the President, a readiness to take whatever seemed to be fair for those claims.

Q. Are you not mistaken, and is not that statement to be found in Mr. Shipherd's testimony here of a conversation between himself and General Hurlbut, in New York?

—A. I think not; I am very confident it is in the written matter itself.

Q. If this claim was to be insisted upon even as to one-half of its amount, with the other indebtedness of Peru, would it not have been an immense burden upon that country?—A. Yes, but under American management a far less burden than she has now under her own management even if she was restored to independence.

Q. You say under American management; do you mean by the Peruvian Company or by this government?—A. I mean by an American company, an American business association such as it was proposed that the Peruvian Company should be. I do not suppose our government would have thought of becoming entangled pecuniarily in the matter, under any circumstances.

Q. Was not the French Government very anxious to have this matter adjusted so that the Peruvian territory might be preserved?—A. A powerful corporation under French protection was, so I understood. I think a part of this indebtedness of Peru is owned in France, is it not?

Q. It has some creditors. It seems that the *Crédit Industriel* represented some bondholders, I do not know where from, but they proposed a loan for the purpose of paying off the Chilean indemnity?—A. Their interest was to get possession of this same property.

Q. Was not the President of the French Republic seeking, through the American minister, to have this government use its influence by intervention or otherwise to prevent the taking of Peruvian territory by Chili?—A. I cannot say as to the taking of territory. I think that the French Government sought to initiate measures looking to peace in co-operation with the United States, and that the United States Government declined to co-operate with any European power in that direction.

Q. Did not the French Government recognize that as a proper policy, so far as the President could commit that Government, and express a desire that the American Government should do that alone?—A. I do not recollect; it may have been so. I do not think it was so originally, but it may have been so at a later period; I cannot say. But the original proposition of the French Government, as I understand, was that the United States with European powers should undertake to secure peace.

Q. Was it not the purpose of the Peruvian Company to take advantage of the distressed condition of Peru, and get a concession of these obligations to the Peruvian Company?—A. That is a mixed question. They hoped, or Mr. Shipherd hoped, that the circumstances then existing, together with the inducements held out to Peru herself in the direction of rescue from her condition, would lead her to agree to pay the whole, or at least some portion of what she honestly owed to Landreau and to Cochet.

Q. How many years had she been refusing to pay the Cochet claim?—A. Well, Cochet himself made claim, as you recollect, in his lifetime.

Q. I merely asked you for the dates; they are fresher in your mind than in mine?—A. I think as early as 1840, certainly as early as 1850.

Q. And what year did the Landreau claim originate?—A. I do not recollect the date; it has been a matter of contention for a great many years.

Q. It all originated long before our civil war began, did it not?—A. Yes, sir.

The CHAIRMAN. Word has just come to me from the House that it is desired that members of the committee should attend as soon as possible. Without even by a suggestion wishing to limit the time to be given to this part of the inquiry, I would like to inquire of the members present who desire to examine Mr. Blair, how much time they will probably require, so that if necessary we can adjourn until Monday. Will Mr. Blount signify his desire?

Mr. BLOUNT. As I shall probably draw somewhat on the aid of other members of the committee when they are examining the witness, I will conclude here. I have no doubt they will bring out all that is necessary.

Mr. RICE. I do not propose to ask any questions.

The CHAIRMAN. From what Mr. Blount has just said, perhaps he has curtailed his examination with the view of having Mr. Rice ask certain questions.

Mr. BLOUNT. No, there are other gentlemen here quite as capable of conducting the examination as I am, and if I have omitted anything it has probably occurred to them, and they will supplement my examination with the necessary questions.

The CHAIRMAN. I think it is the wish of the committee that Mr. Blount shall take all the time he desires to complete his examination.

Mr. BLOUNT. When is it proposed that we meet again?

The CHAIRMAN. I was about to suggest that we adjourn until 10 o'clock Monday, and I was endeavoring to ascertain how much time would be required to complete the examination of Mr. Blair next week.

Mr. LORD. I would like to inquire whether an evening session is not possible. We

could sit for three hours some evening and conclude this examination. Some of the members of this committee have work on other committees, and we are compelled to sit here with only a portion of the members present. I think an evening session, at which all the members could be present, and perhaps devote three hours to the subject, would be advisable.

The CHAIRMAN. I am quite willing to come here at any time, but at present we are sent for by the House. Mr. Belmont, how long a time would you require?

Mr. BELMONT. Mr. Blount has covered a great deal of the ground that I should have gone over, and therefore it will take me but a short time to get through with my examination.

Mr. RICE. I want to say one word to Mr. Blount, and that is, that I think we ought to follow here a rule which is always observed in the trial of causes in equity, that one examiner goes over the whole ground and substantially exhausts it and leaves to others only such detached questions as may occur to them for enlightenment on some particular point, rather than to go over the ground again. I hope that he will adopt that view of it, and finish the examination of this subject according to the plan he has laid out in his mind, and that thereafter, I, for one, shall accept that policy which I regard as the policy of all trials and equally pertinent here, of not entering upon an investigation, which, as it seems to me, he will have exhausted.

The CHAIRMAN. Is it the opinion of the committee that a two hours' session on Monday would be sufficient to complete Mr. Blair's examination? I am not urging this, except that there are other very important measures before this committee which have been neglected now for some four weeks, and, of course, the members of the committee are urging upon me and upon each other the necessity of going on with our regular business. If we could complete the examination on Monday the subcommittee would be able to go to New York next week, and we should then be able to see the end of this investigation.

Mr. WILSON. I should take only a few minutes and ask but one or two questions in my examination of the witness, and one of those questions I will call his attention to now, so that if he is disposed to furnish the documents he can have them here then. I see by reference to page 118 of the testimony, during the examination of Mr. Shepherd by Mr. Blount, he states that he has correspondence between you and himself, which correspondence he declines to furnish. If it will be agreeable to you to furnish that correspondence when you come here on Monday, I shall be glad if you will do so.

The WITNESS. In regard to that correspondence, I desire to state that I have none that is not private, personal, and professional in its nature, and which grew out of our professional relations, and I do not feel at liberty to produce it. I wish to say, however, that I have no correspondence and I know of no correspondence which proves or tends to prove "that one or more ministers plenipotentiary of the United States were either personally interested or improperly connected with business transactions in which the intervention of this government was requested or expected," and I know nothing whatever with reference to the loss of papers from the files of the department. I have no correspondence which, in my belief, is of any importance, or which throws any light upon the investigation of the committee.

Mr. WILSON. We desire to see the correspondence with a view of ascertaining whether there was anything in your correspondence looking to the interference of this government in the affairs of Chili and Peru, and particularly its interference by force.

The WITNESS. No; there is nothing of that description; there was never any intention entertained that I ever heard of to interfere by force.

Mr. WILSON. Or whether there was to be an effort made to prevent any peace between Chili and Peru except upon the recognition, acknowledgments, and settlement by Peru of the Cochet claim and the Landreau claim.

The WITNESS. Not in there. I do not want the committee to understand that I would think of trying to protect myself, or a client even, as against the exposure of anything that ever went from me, either of my own volition, or as an agent for any one else, to the government or to any officers of the government. There are some obligations higher than those that obtain between individuals, and I should feel that I was under obligation to give a matter of that sort to the committee. But I do not know a thing from any source, or of any nature whatever, which tends to prove, nor did I ever understand that there was any design whatever that the Government of the United States should be called upon to interfere to prevent such adjustment as Chili and Peru might effect between themselves, or the making of such terms of peace as they saw fit. But the wish of the Government of the United States, as things were then, I supposed would be so influential as to be controlling with both those governments.

The CHAIRMAN. The hearing stands adjourned until ten o'clock Monday morning, with the understanding that the committee will make an effort at that time to complete Mr. Blair's examination.

Adjourned.

WASHINGTON, D. C., *May 8, 1882.*

The committee met at 10 o'clock a. m.

Hon. HENRY W. BLAIR appeared, and his examination was resumed.

The WITNESS. I desire to say to Mr. Blount before he goes on with the examination that I observe, in looking over the commencement of my cross-examination with reference to the certificate of stock, that Mr. Blount expressed some special desire to know the amount of the certificate. I did not at the time, during the examination, note that you said you thought it was really important with reference to other matters that you had in mind; but seeing that you did say so, I will state the amount of it.

Mr. BLOUNT. What is it?

The WITNESS. It was, as near as I recollect, I am very sure it was, for one thousand shares, and those shares were for \$10 or \$100 each, I think for \$100. Of course a man would much rather have had a retainer in money of \$300 or \$500 than that; but that is the nominal amount of the certificate. And I may as well add that at one time (and I have tried to fix in my mind just when it was, but I can not) Mr. Shipherd desired the use of my name as one of the incorporators of the proposed company, which I declined to have him do.

Mr. BLOUNT. How did you understand my question when you declined answering it at first?

The WITNESS. I understood you to ask for the amount of it, and I did not think it was a thing of any consequence, and I did not care to go into it; but I saw from reading your remark since that you placed some importance upon it. I did not; and if it is important I am willing you should have it.

By Mr. BLOUNT:

Q. You said in your opening statement that it was a well-understood fact that the wish of the United States would be law to Chili and Peru with reference to their difficulties down there, and the settlement of them; am I correct in quoting you that way?—A. I do not remember the phraseology of the statement. I understood that they had that feeling of regard and respect and deference towards our country that any serious expression of our desires would be likely to be influential and perhaps controlling with them.

Q. Other governments had been warned from interference, had they not?—A. I understood it so.

Q. That appears from one of General Hurlbut's letters. I construe it so, and I ask your opinion of it.—A. I understand that to be so. We had declined the proffers of France, and I think of Great Britain, to conjointly present the good offices of the three countries in the direction of peace.

By Mr. BELMONT:

Q. That was during Mr. Evarts's administration, was it not?—A. I think it was.

By Mr. BLOUNT:

Q. You said if the policy of the government had remained unchanged Peru would have been relieved. I find this on page 250 of the testimony: "It is my own belief now that, notwithstanding what seemed to me to have been needless delays and inefficiency in action, if the attitude of our government had remained unchanged an American company would have been formed which would have relieved Peru and changed the current of commercial interests." What did you understand to be the policy of this government before the change?—A. I think I could not state it possibly so well as it appears in the instructions to the American ministers at Lima and Santiago.

Q. But, as a matter of course, we cannot read all of that letter?—A. I understood the policy of this country to be this—to indicate to both Chili and Peru its strong desire, based on its actual good will to all South American states, and without preference so far as our governmental action was concerned to either; that peace should be accomplished without any alterations in territorial jurisdiction; that the right of the victor to pecuniary indemnity for the expenses of the war, not being a war for conquest, could not be challenged, and if Peru, having a fair opportunity presented, failed to furnish the pecuniary indemnity, that then Chili would have the right of the victor to take territorial indemnity; but that it was the desire of our government that she should not make territorial dismemberment a preliminary condition to negotiations for peace. I did not understand that our government intended or proposed to resort to forcible intervention to secure the carrying out of its thus expressed desire; but what it might do if Chili should refuse to give this opportunity to Peru was entirely a question for the future.

Q. And that the Government of the United States was not at that stage committing itself to what it would do?—A. No, sir; not at all. But I supposed that our government felt, and General Kilpatrick's dispatch, as you will remember, shows, that the government was not mistaken in believing that the expressed desire of the United States would control, as advice and not as a threat, the action of Chili, and she did practically, as General Kilpatrick says in his letter, some time in September I think,

accede to this request of the United States that she would not make territorial dismemberment a condition for entering upon negotiations at all, and indicated a willingness to take pecuniary indemnity.

Q. Did not the Government of the United States take further position in that matter in connection with the Landreau claim or the Landreau and Cochet claims?—A. Of course, the letters show that, but if you ask me for my understanding I will give it.

Q. I am asking you for this reason: I take it that, naturally, with your relations to the Peruvian Company, interested in it, and your position as a Senator of the United States, having access to the department, and frequent interviews with it, &c., that you had knowledge of the policy of the government, and that you were in a position to know, and that is the reason I am asking you about it.—A. I would not like to have you under any misapprehension whatever as to my means of knowledge. The circumstance that I was a Senator of the United States, considering the personal relations between myself and Mr. Blaine, and the official positions which he has and then did occupy, was not a circumstance calculated to have any influence whatever on his action, in my belief.

Q. I am not asking that.—A. I do not think my Senatorial capacity counted a straw in my intercourse with the department.

Q. I am not speaking about your influence with the department, but of your opportunities of knowledge.—A. In regard to my opportunities for knowledge, I never sought any knowledge of anybody connected with the department but Mr. Blaine; and I said at first to Mr. Blaine that I never would; that I would listen and be glad to know anything he felt it proper to say to me, but I never pressed him for knowledge. Now, as to my understanding of the position of the government in regard to the Landreau and the Cochet claims: I understood that the department, through its letters to Mr. Hurlbut and to Mr. Kilpatrick (I think there is one to Mr. Kilpatrick) designed that Peru and Chili should have notice of the existence of the Landreau claim, which was an American claim, and of whatever the Cochet claim might become, and that any treaty of peace that was entered into having been concluded with knowledge of the existence of these claims, neither of the parties could find fault with whatever might afterwards be done, whatever that might be, with reference to the collection of them upon the property of Peru. It was simply a notice of their existence; and that the department, so far as the Cochet claim was concerned, exhibited a disposition to do nothing. As to the Landreau claim, it only indicated its purpose to ask Peru that she give Mr. Landreau's claim a fair trial before one of her tribunals, and, failing to do that, intimated that there must still be some remedy for an American citizen to be found when Peru had failed to furnish her tribunal for adjudication.

Q. You have stated the policy, as I understand it, of the administration with reference to Chili, and the Chili-Peruvian war, and also with respect to these claims. Now, in what did the change of policy consist?—A. I said in my statement, an *apparent* change, and have indicated repeatedly in my testimony a hope that there was no real change, and that the whole thing might turn out to be simply a change or a restriction of the discretion of Mr. Trescott from giving, in case he found the purposes of Chili were to insult us, a definite answer withdrawing diplomatic relations with that country. I say a restriction upon his discretion to that, and a reservation of the whole subject to the future consideration and discretion of the Executive at home. If I am wrong in that, why I think there has been a real change, and that the change was one which indicated a conclusion, upon so trifling an affair as a written disclaimer of a design to insult us on the part of Chili, to pocket the insult and get on as best we could.

Q. Wherein was this government insulted in the arrest of Calderon?—A. That, of course, is a matter of opinion, but my opinion coincides with that of General Hurlbut, expressed as late as his letter to me received last January, which is in evidence here, that it was a direct insult to the United States, and I think it was so designed to be.

Q. In what way?—A. In order to explain why I think so, I shall be obliged to take a little time, but I will endeavor to be brief. Chili had conquered Peru utterly, and was in possession of everything she had, and she had ceased to be a nationality almost. Chili had nobody to treat with, nobody to agree to a cession of territory, or the payment of an indemnity, and a government was necessary. Pierola was in command of his wandering hordes, but he did not govern Peru at all, and Calderon was set up as President of Peru by the Chilians, with the expectation that he would make such treaty of peace as they desired. He was put forth by them as provisional president, and the United States and other foreign powers were given to understand that he was the representative of Peru that would be recognized by Chili. He entered upon his duties. The Peruvian congress indorsed his government, and thus he became really the constitutional representative of the Peruvian people. Our own government entered into official relations with him with the assent and approval of Chili, and the President of Peru, Calderon, and his authority gradually came to be acknowledged by Peru substantially as a whole. The congress had a session, giving whatever power they could give to him, and they gave him instruc-

tions to treat for peace, but not to cede territory. The Chilians, understanding the feelings of our own government upon the matter, agreed with our minister to enter upon such negotiations without demanding a cession of territory, and indicated a willingness to receive a pecuniary indemnity. Matters proceeded in that way amicably, our own government entering largely into whatever appertained to those proceedings for peace. But when Chili discovered that the dismemberment of Peru would not be assented to by this government thus set up, I think she began to indicate a lack of good faith in her previous professions that she was willing to treat for peace upon the basis of an indemnity, and a desire to cast down the government which she had established, and which in good faith with us, certainly, she could not destroy, unless that government did something palpably inconsistent with the rights of Chili and her pretensions, as she had herself set them up with reference to this indemnity and the like. And as it became more and more apparent that the Calderon government would prove impracticable, and that Peru would get help from outside sources, either from the Credit Industriel or from this American company, the Chilians endeavored to get out of the status that they had helped everybody else to get into. And, first, they took away the treasurer, and the exercise of authority on the part of Calderon. Later still, finding him somewhat indisposed to yield and make a treaty without giving up territory, notwithstanding the great probability that Peru would be able to make peace on the terms that Chili had indicated a willingness to accede to; fearful, in fact, that she would be able to comply with those terms so consistent with the wishes and policy of this government, they arrested him, and arrested him without any cause, and abolished his government and took him off to Chili, and I think did so in a hot-headed insulting manner toward the United States, and I imagine did so with a deliberate intention at the time to indicate her contempt for our government and for our policy towards both Peru and Chili. I think she did that, as I have indicated, somewhat under the stimulus of foreign influence. You will find in one of Mr. Hurlbut's dispatches an account of the certainly indecorous action of the English commodore; and then, further, Chili has refused absolutely to treat for peace upon any but the preliminary condition that there should be a cession of the very territory which constitutes the resources of Peru, and I think that such an absolute change on her part in so short a time, with no modification of the attitude of the United States, and with nothing done on the part of the United States that I think is calculated to wound the sensitiveness of that power, I think that is a change without provocation and constitutes an insult, and her little letter to our State Department that she did not mean anything by it is about the same as if one man would meet another on the street and spit in his face, and then say he did not mean anything by it, in order to avoid the consequences of a natural resentment of the insult.

Q. You stated in your direct testimony that President Calderon had been recognized and you understood his agents were eagerly anxious for the adoption of Mr. Shipherd's plans; is that your understanding?—A. Yes, sir.

Q. Was that the understanding of the State Department or of Mr. Blaine?—A. That statement was made to Mr. Blaine by Mr. Shipherd, at those interviews, or rather the first interview, and, indeed, by myself, my knowledge coming from Mr. Shipherd. I ought to emphasize, because it is due to everybody, the fact as I understood it, that the Peruvian consul and others interested for Peru, in New York, were exceedingly anxious that this plan, which was the only one that they knew anything or could conceive anything of as likely to help them, should be accomplished.

Q. You understood that those agents were representing Calderon in that matter?—A. Representing the Peruvian feeling and the Peruvian interests, and I think Calderon too. The Peruvian consul, of course, must have been in communication with his government.

Q. So that, that being true, the probability is had not the Chilian Government arrested Calderon, the plans of the Peruvian Company would have succeeded?—A. I think so. I think that the American plans—and the plans of the Credit Industriel would have been better than none at all, although it was a foreign corporation—I think American plans for aiding Peru would have succeeded if Mr. Trescot had carried out the instructions with which he left this country.

Q. Did you not understand from the agents of the Peruvian Company, and was it not your conviction from information you had, that but for the arrest of President Calderon the plans of the Peruvian Company would have been successful?—A. Perhaps that is putting it a little too narrowly. But for the interference with the exercise of the powers of the Calderon government—if that had remained representative of Peru—I think that these plans would have been carried out; I do not suppose to the extent of the payment of these claims in the way they are stated here, because I have no idea that Peru ever would have agreed to any such amounts, but I think that such amounts as would have been an inducement to American capitalists to have undertaken the enterprise would have been agreed to.

Q. You have no information at all in the way of facts; that is a matter of conje-

ture of your own, is it not?—A. Yes; I am stating the whole of the matters that laid in my mind.

Q. You do not know as to the reduction of the amount; you do not know anything about any matters of compromise?—A. I do not know but what Peru would have agreed to the whole of it, but I do not think she would.

Mr. BLOUNT. I have been informed that some other members of the committee desire to examine the witness, and, therefore, I will bring my examination to a close.

Mr. DEUSTER. I desire to put a few questions.

The CHAIRMAN. The order was that Mr. Rice should examine the witness, and afterwards Mr. Belmont. (To Mr. Rice.) Do you desire to put any questions to the witness at present?

Mr. RICE. No; I do not.

Mr. BELMONT. I will postpone my examination until Mr. Deuster gets through.

By Mr. DEUSTER:

Q. According to the testimony which has been given before the committee it seems that nearly every one was in sympathy with Peru, because, as is stated here in the testimony of Senator Blair, "Peru was not only conquered but was being massacred, and although she had untold wealth and resources her dismemberment and destruction were imminent." You further said, Mr. Blair, that when you had your first interview with Mr. Shipherd you agreed readily to call the attention of the Secretary of State to these things as a humanitarian matter, and even declined to receive any compensation for so doing as attorney.

The WITNESS. Did I state that I readily agreed to call his attention to it as a humanitarian matter simply?

Mr. DEUSTER. Well, I do not cite exactly your testimony; that is what I assume from the testimony. Now, was it your desire or did you wish to be understood as saying that your sympathy with Peru led you in this matter more than the interests, perhaps, of these claims against Peru?—A. In my original action in that matter I do not think the claims influenced me at all, because I first declined absolutely anything like compensation for anything I might do. I do not want to set up as a humanitarian, or to be put in that light as claiming to be an especially benevolent, soft-hearted gentleman, but all these considerations of a national and international character that I have indicated in what I have said to the committee and the deplorable condition of the inhabitants of Peru influenced me in my original purpose of calling the matter to the attention of the Secretary as requested by Mr. Shipherd. I thought this afforded a chance for relief, and I did not know of any other. And I ought to say that Mr. Shipherd was spoken of to me as a gentleman of great ability and of good character by men in whom I had confidence. His wife, it turned out upon our first interview, was of a family that live in our town, a most excellent family, and it was matters of this kind that led me to do it, and I am glad I did it, and that is all I can say about it.

Q. It was then, in short, your sympathy with Peru more than anything else?—A. My sympathy with Peru and my view of the international importance of her rescue.

Q. Upon what ground does your sympathy for Peru rest?—A. Well, she was the "under dog" and she was being badly beaten and torn. She was getting more and more of it and she had begun to eat herself. The ties of patriotism seemed to be dissolved, and wandering and brutal hordes were murdering in all directions, and the distracted condition of the country could hardly be exaggerated. I do not suppose that a people in modern times have been reduced to greater extremity from social disorder as a result of the war, and from the burdens imposed by conquerors, than Peru has suffered during the past year or so; suffering at that very time.

Q. Do you know the history and origin of the present complications between Chili, Peru, and Bolivia?—A. I know something of them.

Q. Do you know that an offensive and defensive alliance had existed secretly between Peru and Bolivia for six years previous to the commencement of the present war?—A. I am aware that it is understood there had been for some time.

Q. Do you know that Bolivia had guaranteed by treaty not to increase the export duty on saltpeter for twenty-five years, or otherwise exact contributions from the Chilians engaged in that trade in Atacama, in considerations of Chili's surrendering all the income and all other advantages secured to her by the treaty of 1865 between the two countries?—A. I know that it was agreed or understood to be agreed that she should not increase the export duty in the way you speak of. I know that she, however, claims that she had a right to make that increase as against certain private corporations that were engaged in the business. Whether she did so rightfully or wrongfully, of course I do not know.

Q. Is it not true, nevertheless, that Bolivia levied a tax, and that upon the refusal to pay, made preparations to sell the property of the Chilians valued at \$6,000,000, and that this act induced the sending of Chilian troops to Autofogasta?—A. If that is true it is also a part of the same statement or should be that upon complaint of the Chilians with reference to the imposition of this additional tax the subject was taken into con-

sideration by Bolivia, and negotiations were being entered upon to settle the matter amicably at the time that Chili, without notice, took violent possession of the port you have indicated, and practically commenced the war precluding anything like peaceable negotiations for the adjustment of this difficulty.

Q. Is it not a fact that war against Peru was not declared by Chili until the secret alliance with Bolivia was acknowledged by her?—A. That may be so, but it is still a fact even if it is so that Chili attacked Peru in advance of any expectation of violence, giving no opportunity for preparation for war or any substantial preparation for war on the part of Peru, and that she was taken entirely at a disadvantage. The fact of such a secret alliance between Peru and Bolivia is not a matter which in my belief would entitle Chili to make war upon its discovery. Those alliances are not uncommon among nations, and no other nation has a right to make such alliances a cause of war.

Q. Do you know that Chili in the treaty of 1865 had receded from its claim to the 23d degree of Southern latitude as boundary between that country and Bolivia, which line had remained undisputed until 1842, when the existence of the saltpeter deposits became known?—A. The mathematical accuracy of statement which the question contains indicates a careful examination of documents, which ought to require on my part a corresponding examination of documents and preparation in the answer; and I would not like to be held to dates and particulars in my reply as I would be willing to be if I had had opportunity for making that sort of preparation. But I understand that for many years there had been a dispute with regard to the boundary between Chili and Bolivia, and that a treaty had been agreed upon which fixed the boundary as you have there stated it; with this and other stipulations and understandings as to the occupation of the Salitre territory, where the principal operations, or a very large part of the operations, were being carried on by Chilean citizens.

Q. Is it not a fact that Chili at the outbreak of the war was numerically very inferior in military strength to Bolivia and Peru, and therefore really less prepared for an aggressive war?—A. I think not. I do not understand that to be so at all. Chili is by far the best fighting power in South America. She has the most vigorous population, and the sentiment of patriotism and nationality is stronger in the Chileans than in any other inhabitants of South America. The Chilean will fight for his country on the street or on the battle field, utterly regardless of any disproportion of odds, and it had a very vigorous military and a vigorous naval preparation. It is prompt, strikes early, takes advantage of all opportunities, and is a marvellously plucky little power with a disposition to expand, which is something an American cannot find fault with, which makes her when in a position hostile to that of the interests of our own country all the more dangerous, especially in alliance with foreign influences.

Q. It is nevertheless the fact that Chili numerically was inferior to both?—A. Chili could not have had more than one-third the population of Peru and Bolivia combined, and yet she demonstrated that she was more than a match for them, and perhaps would have done so if all the powers had had the same opportunity for preparation.

Q. I would ask you whether Peru has deserved a greater consideration at the hands of the United States Government than Chili, and why we should oppose the annexation by the latter of provinces which are to a great extent already in Chilean possession and whose industries are in the hands of Chilean subjects; I refer of course to the Bolivian province at Atacama and the Bolivian province at Tarapaca.—A. Tarapaca I do not understand is in possession of Chilean subjects to anything of the extent of the Bolivian province and so far as Chilean private interests are concerned there might be reasons for the annexation of the Bolivian province by that government in the interest of Chilean citizens, that could not possibly exist with reference to Tarapaca, the Peruvian province, and which is the only one that this investigation has any special reference to, I suppose. You ask me if there were reasons for our sympathy with Peru rather than with Chili?

Q. Yes.—A. So far as the humanitarian part of this is concerned had the condition of the two countries been reversed and Peru been pounding Chili to death after she was prostrate and helpless, I should no doubt have felt, as I think anybody would, the same sympathy with Chili as we naturally had, under the actual facts, with Peru. But when you pass beyond the line of humanitarian reasons and come to those which should actuate us as a nation, I think that every reason would incline us to support Peru rather than Chili; and so far as the general policy of the dismemberment of nations as a result of war is concerned, I understand that we are adverse to it, and everybody is adverse to it, and that the international practice of modern times is adverse to it, unless it turns out that pecuniary indemnification cannot be given by the vanquished to the victor.

Q. Do you consider a claim unrecognized and resisted by a country against which it is made, a sufficient reason for interference in that country's behalf between it and the victorious neighbor?—A. Oh, no, not necessarily, and as you put the question, not by any means.

Q. Well, not one of these claims had been recognized in Peru—neither the Cochet

claim nor the Landreau claim nor the *Crédit Industriel*.—A. I think that is not a correct statement of the facts. I think the justice of both claims had been never denied in Peru, but on the contrary had been admitted, not in amount, as I stated before, but that both Landreau and Cochet were entitled to substantial rewards from the Peruvian people for the benefits conferred upon them; and had Peru denied it I think no impartial authority outside of Peru would question the very great obligation of that nationality to both those men, having never paid anything, not having exhibited a disposition to comply with their own admissions of what they should pay, and having exhibited great lack of good faith, I see nothing wrong in these claims being presented and payment requested.

Q. Does it not appear a little singular that this Cochet claim was presented just at the time when Peru was in distress and in the expectation that a part of its territory should be taken by Chili?—A. I think if it had never been presented before, if it was a new claim, that it might be quite singular and its injustice would be quite probable. But this is a claim, it must be borne in mind, that originated forty years ago, and had been often pressed and admitted, but compensation denied.

Q. I mean to say was it not a little suspicious or peculiar that a Peruvian should come here just at that time and sell his claim to Americans for the purpose, as is evident, of collecting it or enforcing it?—A. I do not know. I suppose the dates will show when this natural son of Cochet, the Peruvian, parted with his interest; but I never understood that he came to this country. I have understood that Mr. Peter Hevner, an enterprising American, who had spent many years in Peru, and was familiar with the claim, purchased it in Peru. I do not know how long ago. Undoubtedly he was thinking about filling his pockets.

Mr. DEUSTER. That is all I have to ask.

Mr. WILSON. I desire to ask Senator Blair two questions; nothing by way of sentimentalism. (To the witness:) Do you know of any fact or circumstance tending to show that any minister plenipotentiary of the United States or any other government official had a personal interest or was improperly connected with the business transactions in which the intervention of this government was expected or requested?—A. Not the slightest, nor have I a belief nor a suspicion of anything of that kind.

Q. Did you see anything in the conduct of Mr. Blaine as Secretary of State in the Shipherd-Peruvian matter which indicated that he was acting from selfish or personal consideration or pecuniary benefit or political advantage or promotion? If so, what was it?—A. I never saw nor suspected anything whatever in Mr. Blaine or in his conduct of these affairs, or in his conduct as Secretary of State in any affair, that could lead me to believe that he was acting otherwise than from the highest motives and in accordance with what he believed to be for the benefit of his country. I do not believe an American official was ever purer or more upright than Mr. Blaine in his conduct of the office of Secretary of State.

Q. You saw nothing selfish or personal in his conduct?—A. Not the slightest.

Q. Or looking to pecuniary or personal benefit?—A. Not the slightest. If there was any fault with his policy it was that it was too tame.

Q. One of my colleagues on the committee remarked just now that you had said something about the question of the fee or the stock you had received.—A. Oh, I said that the certificate as I remembered it was for a thousand shares and that the shares were either \$10 or \$100 each, and I think \$100, but I added, which was not perhaps necessary, that I should have much preferred \$300 or \$500 in money.

Q. Do you regard that to-day as valuable for anything in the world except shotgun wadding?—A. I do not, and I do not want to be understood as indorsing the question to the extent of saying that it is valuable even for that purpose.

Q. What did you understand was paid to young Cochet for his interest in this alleged claim of his father against Peru?—A. I never had any understanding about it. I never knew anything about it.

Mr. DEUSTER. It was bought of Peter Hevner, and Hevner bought it of young Cochet.

By Mr. WILSON:

Q. Do you know what was paid to Hevner for it?—A. I do not know anything of the consideration given for the Cochet claim at all as among any parties whatever.

Q. I understood on Saturday that you declined to make public the correspondence between you and Mr. Shipherd because it was of a personal and private character, and grew out of the relation existing between counsel and client. I want to ask you whether anything in those letters or that correspondence looked to molding the policy of this government, or exercising any improper influence on any of the departments of the government in the interest of the Peruvian Company.—A. Nothing whatever that I am aware of, and I said explicitly to the committee that anything whatever done by Mr. Shipherd or by myself, or by any agent of the company, with the department, of which I had knowledge, I did not look upon as protected by any professional relation. I have stated to the committee all, so far as I can remember, that I

have ever done with reference to this Peruvian Company's affairs with the department; I do not remember anything else.

Mr. WILSON. That is all I have to ask.

By Mr. BELMONT:

Q. Did you not say that the Chilians arrested Calderon suspecting that the plans of the Peruvian Company might be carried out?—A. I stated that that was my belief.

Q. If it was the duty and the policy of the United States Government to bring the war to an end preserving the territorial integrity of Peru, could not the United States have accomplished that result if the State Department had kept itself clear of interference in the Cochet and Landreau claims; would it not have been easier to have accomplished that result if these claims had not been promoted?—A. I think not. I think it would have been an impossibility for this reason. The first part of the question makes an assumption as though I had said it was the duty of this government to make peace.

Mr. BELMONT. I said *if* it was.

The WITNESS. I do not wish to be understood as saying that. But passing to the substance of the question I will say that the government had warned away help from abroad either from other nations or from the Credit Industriel. As I understood that company had sought the countenance of the department before and during the administration of Mr. Blaine. They received no encouragement, and did not, I suppose, dare to enter upon important business transactions in that company without the acquiescence of the United States. Therefore there was no help for Peru; she could not get this indemnity unless she derived it from our country, and our government, of course, would not furnish it nor indorse her bonds, nor in any way become mixed up with her pecuniary affairs. Therefore it must be done by citizens of the United States if at all; and only through the use of these claims as a means of obtaining the basis of an American organization could it be possible to get the funds to pay the Chilean indemnity; and therefore in direct line with the policy of the United States to prevent territorial dismemberment, and to give Peru a chance, was there a recognition of any effort of our own citizens in this direction.

Q. You considered the claims necessary, then, to carry out that policy?—A. I considered something of that sort necessary, and these claims were the only things in existence so far as I knew.

Q. You thought that the government, and the company owning these claims, would have to act in concert?—A. Not in concert, but not in disagreement, the government giving the opportunity, saying to Chili and Peru, with whom its wish would be likely to be dominant, that she wished that Peru should have a chance to hunt for the money. That would stay the proceedings of Chili in the way of annexation or forcing a treaty which involved dismemberment and the annexation of the resources of Peru which she had so largely in the guano lands, and in Tarapaca, to Chili, these resources being all that an American association could fall back upon to secure its advances. Therefore the government taking that position, and American citizens understanding it was likely to occupy that position, they would feel the confidence of business men in entering upon a great enterprise of that kind.

Q. These claims were upon that territory of Tarapaca; the Cochet and the Landreau claims were based on the guano deposits in that territory which Chili was endeavoring to take from Peru?—A. That must be collected, if collected, by an American company from the resources and territory desired by Chili.

Q. That particular piece of territory?—A. Yes. I understand that Tarapaca and the guano islands comprise and have for many years the income of the Peruvian Government, and its chief commercial export.

Q. Do you understand that the policy of the government contemplated any protectorate over any portion of Peru?—A. No, I do not understand that the government had ever reached any such position as that.

Q. I mean whether it was ever contemplated at all or ever suggested.—A. No, I never understood it to be the purpose of the department.

Q. It was the purpose of the company, was it not?—A. No.

Q. It was not?—A. No. The company no doubt would have been extremely glad if affairs should take that course. An American protectorate over the territory of Peru would have been the best guarantee of the safety of American business operations.

Q. I understood, I think it was on Saturday, that you said that that was not suggested until after your connection with the company had ceased.—A. Precisely, and I was about to explain more fully to you then. In the early part of November, during this interview at Washington, which occurred at that time, the matter of a possible protectorate and the probability of a desire on the part of Peru for a protectorate was mentioned. I do not know whether it was ever mentioned in the presence of Mr. Blaine or not; very likely it was; yes, I think it was. But any connection of that

kind must necessarily have been based upon a solicitation by Peru itself. It would not be tendered or proffered by the United States, and Peru had expressed no such desire.

Q. Was that one of the purposes in the sending of the commissioners?—A. Oh, not at all. The term "commissioner" is a term of some dignity, and I never looked at it otherwise than as meaning that gentlemen were to go down there and adjust these private claims with Peru in amount, and with reference to all the details which might be the basis of the action of the company.

Q. Did not the company intend to enter into an agreement with the Government of Peru?—A. Necessarily, because these claims were against the government.

Q. Were these commissioners to undertake to bring about that agreement?—A. I suppose that is just what they would do.

Q. Well, you know of course the terms of the agreement; they are contained in the prospectus?—A. I know what is printed in that prospectus; but you, of course, understand that a prospectus would be a very different thing from an ultimate agreement between parties.

Q. What was the intention in regard to this agreement; what was the agreement the company intended to make with the Peruvian Government?—A. I cannot say that, for the reason that commissioners would necessarily go with discretionary powers. I suppose that they would naturally make such an agreement as they could, and one to the advantage of an American company; that must be so, or otherwise the American company would not advance money.

Q. Did they intend that the Government of Peru should admit this claim?—A. She would do so if she made an agreement.

Q. And then upon that the company would enter into possession of the territory, so far as the working of the guano and sale of the guano according to the agreement here in the prospectus was concerned?—A. That is the manifesto, you know.

Q. That they should occupy this territory for the purpose of controlling the sale of guano; was not that the purpose?—A. It would have been undoubtedly necessary for such a company to have organized on a large scale, to have had many employes under its own control, to have been capable of operating the resources of niter beds and guano beds, and to have defended themselves, if necessary, against any lawlessness that might have assailed them.

Q. What is the meaning of this in that connection, this part of the proposed agreement: "The company may at its discretion maintain at all times such a force as it may deem necessary for the protection of its property and interests, and this force may include detachments from the land and naval forces of the United States"? Do you consider that as having been seriously contemplated, that the company should occupy this territory under those conditions?—A. I cannot say in regard to that. I suppose that such a company was entitled to protection, if unable to protect itself. If there were American troops there, and the government was willing to assist in protecting the property of American citizens there, it would be perfectly right that it should do so, and in fact perfectly wrong that it should not do so; and that would be simply a stipulation that Peru, failing to protect these large interests of American citizens, and the citizens unable to protect themselves, their government might protect them, which is simply formulating a well-known principle of international law, which would have been all the same, whether in an agreement or out of it.

Q. Did I not understand you to say that there would probably be a large emigration of Americans under the stimulus of this company?—A. Undoubtedly that would have been the case.

Q. Did you not say something like 40,000 or 50,000 people?—A. I said 5,000, 10,000, 40,000, or 50,000; I did not make a census of the exact number. These are emigrants of the imagination, you know.

Q. Then the company after being in occupation would undertake to pay off the indemnity, would it not?—A. I understood so. I suppose Peru would have no inducement to enter into an arrangement of this kind unless she was to receive an indemnity, which was her most pressing need.

Q. Then the first step was the admission of these claims?—A. Yes, sir.

Q. How was that to be done? The courts were in abeyance, or would it have been necessary to go to any courts at all?—A. I do not imagine it would. The President and his Congress, which he could have called together, would have arranged all that.

Q. President Calderon could have done that?—A. He could have arranged his agreement subject to approval by his Congress.

Q. Then the company would enter into possession, and then pay off the indemnity; that was the general plan?—A. Yes, if that agreement should have been formulated in such a way as would have satisfied American capital it was a safe thing to enter upon, then the company would have been organized; would have raised its money and paid the Chilians, and they would have evacuated; the company would have furnished the necessary means to aid the Peruvian Government in its ordinary operations, and provided for foreign bondholders, and all that.

Q. I see that the company was to make "no other demand for payment so long as this agreement shall be observed in good faith by the Government and people of Peru; and the net revenue realized by the company under this agreement shall suffice to pay the interest annually accruing upon the entire indebtedness due from Peru to the company."

The WITNESS. Do you, as a business man, think there is anything improper in that?

Mr. BELMONT. O, no; I was only asking what this agreement was.

The WITNESS. You have it *in extenso* in the book.

Q. But still you say the agreement itself might not have been carried out?—A. You speak of that as an agreement; it is simply a proposed proposition, which is quite a remote thing. It is not even a proposition; it is only a proposal to propose.

Q. Would it not have been necessary for the United States to enter into a treaty also at the same time?—A. I do not see any occasion for it.

Q. You are familiar with the opinion of Mr. Scott Lord, the counsel of the company?—A. I have read his examination of a great many similar treaties or arrangements between individuals and governments; I looked it over.

Q. In regard to claims?—A. Yes; I passed my eye over his list there; I have no other familiarity with it.

Q. He says, on the part of the company, that it is agreed that it was very desirable to have a treaty made with Peru without the interference of Chili, and the question presented is whether this can be made during the time that the Senate is not in session. Did you not say that you had proposed an extra session of Congress; you had thought it advisable?—A. Yes, and I did what I could to accomplish it.

Q. Will you state the reason you had for desiring an extra session of Congress?—A. I ought first to state the time, for you may be under some misapprehension. You recollect there was a special session of the Senate called by President Garfield immediately upon his inauguration.

Q. I mean only in respect to this war; the necessity of an extra session?—A. O, no; all that I said or did with reference to an extra session was long before I knew anything of these claims at all. It was as the special session of the Senate went on, commencing March 4 last, a year ago, at the time of the inauguration—at the time of the dead-lock, you recollect.

Q. Certainly; but I understood you to say that you had suggested an extra session in connection with some of these questions.—A. Well, as the dead-lock went on and time was being wasted, and the Senate kept here, I believed that instead of wasting time in what seemed to me to be an extraordinary quarrel, one quite as needless as extraordinary, it would be much better to call the House of Representatives, as there were many matters of great national concern which ought to be considered here immediately.

Q. And this was one?—A. And this matter of the South American war and the isthmus to which I considered it relative, was one of these measures that I had in mind and to which I alluded in some remarks that I made to the Senate upon the subject. And there were many other things. I believed, too, in addition to all that, that it would not have been a week before the presence of the House of Representatives and the pressure of public affairs of real importance would have solved the dead-lock and relieved the country from what has followed.

Q. I only refer to this matter: Was there anything that Congress could do or ought to have done at that time about these questions relating to Peru and Chili, questions of a treaty, for instance?—A. Whatever appertained to our isthmian and South American policy I understood should be embraced. You will find in what I said that I allude to the isthmus, that Lesseps was digging his canal, &c.

Q. I am only referring to this matter?—A. I refer to both. The isthmus policy involving this very largely.

Q. The reason I ask is, I see there is an opinion of Governor Boutwell's on some of these points in which he says that the President may negotiate treaties through an agent or representative, whose designation or appointment has not been submitted to the Senate. Do you know what that refers to?—A. No, I do not; I never saw that opinion until it was published. I did not know that upon that subject Secretary Boutwell had ever given any opinion; at least I have no recollection of it; and this opinion of Mr. Lord's I had no knowledge of until it was published by the State Department.

Q. Then you do not know whether there was any intention of entering into a treaty on account of these claims?—A. I supposed there was an intention on the part of the company, or whoever represented the claims, to enter into an agreement with Peru; but I do not believe there was ever any intention on the part of our government of entering into any sort of an arrangement with Peru with reference to these claims, but quite the contrary.

Q. But the company was to undertake this itself?—A. Yes, sir; without any connection with the government whatever.

Q. Then if the company was acting independently of the government, and President Calderon was arrested on the suspicion that he was entering into arrangements with the company, how could his arrest have been an insult to the government itself?—A. I think that makes no difference in regard to it; the *animus* of the destruction of this Peruvian Government set up by Chili would be all the same, because the policy of the United States, or the desire of the United States that Peru should have this chance to save herself, existed all the same, and the destruction of that government was just exactly the same in its motive as regards the United States. I do not suppose Chili looked upon this company as of any particular consequence in the matter. But Chili felt that through the desire of the United States Peru should have the chance; she was getting the chance, and she destroyed this government accordingly. This chance would not have existed—no American capitalist would have thought of taking advantage of these claims or making any arrangement with Peru to raise the money unless he believed that he was to get possession of that property as security. He could not stay Chili; nobody could stay Chili but the United States in the expression of her desire; and the expression of that desire did stay her; and when Chili went back upon all her implications and promises and understandings, and destroyed this government that could have made these negotiations, why she must have done it with bad animus towards our country, I should think.

Q. You understand that it was necessary that Calderon should be upheld in order that the Peruvian Company should carry out its plans?—A. Calderon or some Peruvian Government.

Q. I mean Calderon in this case?—A. Of course that was a destruction of Calderon's government as far as it went. Until it was understood that Montero, the Vice-President, would take his place, of course there was no Peruvian Government to treat with by the Peruvian Company or anybody else.

Q. But still the upholding of Calderon was necessary to carry out the plans of the Peruvian Company?—A. Calderon or some one representing the Peruvian Government.

Q. But Calderon in this case; you say Calderon was the *de facto* government?—A. Well, the *de jure* government also, I should suppose, after he was indorsed by the Congress of his own country.

Q. Either.—A. Yes, or both; I should say both.

Q. The upholding of his government, I say, was necessary to carrying out the plans of the Peruvian Company?—A. Yes, sir; or the substitution of some other which would be equally legitimate representing Peru, and the destruction of the Calderon Government was the removal of such so far as Chili could do it.

Q. Then you consider the plans of the Peruvian Company failed with the arrest of Calderon?—A. Failed for the time being. I have no idea that if the Montero government, he being the Vice-President, had continued with the same power of action that Calderon possessed before he was interfered with, this arrangement could have been carried out with Montero.

Q. But of course you know Montero was only able to maintain himself in the mountains, and that fact I think would show that even the Calderon government was not a *de facto* government?—A. The dispatches of our minister show that the Calderon government, when he was interfered with, was practically recognized over almost the whole of Peru; and there is no doubt I think that the government was likely to have been supported by all the physical force of Peru. But of course Chili's predominating power when it was made use of to destroy the image that it had itself set up, put an end to such government as Calderon was exercising, largely.

Q. Then you consider the action of Chili in arresting Calderon defeated the plans of the Peruvian Company?—A. For the time being.

Q. I understand the Ex-Secretary to have testified under oath that he believed the action of Chili against Peru to have been what he described as a "put-up job" on the part of the British Government?—A. Will you please repeat your question again?

Q. That he believed the action of Chili against Peru to have been what he described as a "put-up job" on the part of the British Government. I want to know whether you take the same view of the matter?—A. Well, that is a phrase that I do not know how to define—a "put-up job" as between nations. Perhaps, from the published accounts of all that occurred between you and Mr. Blaine personally, you ought not to be held to the most actual, definite, dictionary definition of terms, either of you.

Q. You understand my question, do you?—A. Certainly. Do you mean to use that phrase, "put-up job," in an offensive sense with reference to Great Britain?

Q. No; I thought it was difficult to see what interest Great Britain had as a government. I wanted to know what was meant by that term; or, upon the whole, I had rather have your own opinion as to the action of Chili against Peru, so far as the British Government is in any way concerned.—A. I believe that British interests and British influences were the very back-bone of the Chilean action; but I thought that British influences and interests did just exactly what they had a right to do, and what

we would have done if our circumstances had been reversed. I do not imagine Great Britain nationally, or through her citizens, did anything that she had not a right to do.

Q. Do you think that it would have been possible for American interests to compete successfully with British interests so long as our tariff and navigation laws are as they are? I mean to say, how could the diplomatic action of the government bring about the result you desired?—A. Well, that is another large question. Things that are, are not necessarily to continue always, and if I was to set about reversing our foreign policy with reference to commercial interests, why, I should reverse it, that is all.

Q. What interests of the United States were involved in the hostilities between Peru and Chili which called for any intervention on our part beyond the friendly good offices, which, of course, might be refused?—A. I am not aware that any intervention further than our good offices was proposed.

Q. Well, in case they were refused, what would have been our action?—A. If I had been Secretary of State, I should have been liable to removal before this time, very likely, and I am certainly unable to tell you what anybody else would do.

Q. Did you understand that they were accepted?—A. Our good offices?

Q. Yes.—A. They were not tendered any further than the correspondence indicates. They had been refused, you recollect, during Mr. Evarts's administration—while he was Secretary. They had been declined, and we could hardly tender them again unless they were invited. We had indicated a willingness to do any kindly act that was possible in the direction of peace. Our ministers had been instructed, as I recollect it, to intimate to both governments that whenever the good offices of this country would be desired they would be readily tendered.

Q. Was not the minister to Peru instructed to use his good offices for the claims?—A. No.

Q. You do not understand that in that sense?—A. Quite the contrary. The instructions were, so far as the Landrean claim was concerned, if proper representatives came there to use the good offices of the legation so far as to secure a tribunal for a trial. That is my recollection of it; and as to the Cochet claim, nothing whatever was proposed.

Q. Do you understand that these instructions were the result of the interview of July 25 and 26?—A. I cannot say that, but I suppose the dispatch of August 4 with reference to these claims would not have been sent but for that interview. Our calling attention to these claims led to that dispatch, I have no doubt.

Q. In regard to Congressional action, you wrote on the 26th November that the recent management of the Shipherd matter and the course of events led you to apprehend Congressional action?—A. Yes, substantially that it might happen.

Q. That was really the reason of my putting my questions before. Why should there be any Congressional action during the summer on this question?

The WITNESS. During the summer?

Mr. BELMONT. Well, at this time, on the 26th November, or at any time?

The WITNESS. Now, Mr. Belmont, you are a gentleman, and I want to say one or two things to you; that I have in my public life done what I could to keep along without any personal interest in matters that might possibly become the subject of legislation. I have been as careful in that regard, I think, as most men; and when I wrote that letter I had as much reason to suppose that the matters of this company would culminate in what might be valuable as at any other time, if not more. But the course of events looked more and more as though the government might possibly become a party ultimately. President Calderon had been arrested, which I did not contemplate earlier. He had first been deprived of his government, then of his personal liberty; and it looked more and more to me as though foreign interests were backing up this republic of Chili, and if we maintained the policy we had entered upon nobody could tell whether a protectorate would become a subject-matter of discussion. If it was, it necessarily would come to Congress, and the affairs of the company might become mixed up—I could not anticipate in what way—with the discussion of the protectorate and with the policy of the government; and I made up my mind that I would not have any personal or pecuniary interest in any matter that might get into Congress. So far as anything I had done in those claims as counsel or otherwise was concerned, it was more legitimate for me to have done that in connection with the State Department than to argue a case in the Supreme Court. These are remote claims against a distant country, and there could be nothing touching a man's personal honor or his conduct as a Senator, or as a lawyer, in doing what I did, or if I had taken large fees with reference to those claims. But when I had an idea from the course of events, as I stated, that the thing might come into discussion in Congress, and I might have to vote on it, I threw it aside just as you would have done, I have no doubt.

Q. I mean what Congressional action would there have been; might there not have been a treaty discussed in the Senate?—A. It might have been a mixed treaty, in which the affairs and operations of the company should have entered in as conditions and involved the treaty as between the two nationalities.

Q. That is what I should suppose, judging by these opinions of Governor Boutwell and Mr. Lord, if that should have been the basis of any action.—A. Very likely, though these opinions I have no recollection about. I might have known in regard to one of them—Mr. Lord's opinion—but I think not. I have no recollection of knowing anything of these opinions until they were published by the department. Is the opinion of Mr. Boutwell published there?

Mr. BELMONT. Yes.

The WITNESS. Published by the department as Mr. Boutwell's opinion?

Mr. BELMONT. No; this is Mr. Lord's opinion. There is only an extract from his opinion embraced in one of the letters. I see he refers to the practice of the United States Government to conclude treaties with regard to private claims. That is the way in which there might have been Congressional action.—A. There might have been in that way, and there might have been in other ways.

Q. For instance, any question of hostility; did you think that at all possible under the circumstances?—A. O, everything is possible. Unless Chili should have been supported, as she might have been, and she might be now, by foreign fleets and forces, there would not be likely to be any hostilities in any position that our country might take, or should take.

Q. Had you any reason to believe that the arrest of Calderon would be resented by our government?

The WITNESS. At what time do you mean?

Mr. BELMONT. After his arrest.

A. No, not in any way that is not indicated by what I have said hitherto. I supposed that explanations would be asked by our government, and I supposed, until satisfactory explanations would be made, that our government would look upon it as an insult. And I apprehend that our government is not so low yet that it will not resent an insult in some way, even if it does not do so dangerously.

Q. You consider the explanation given here by Mr. Martinez as not being sufficient?—A. I do not myself take much stock in it. I will withdraw that word "stock." I did not regard it as anything more than a means of slipping out of the matter in an oily way.

Q. Was there any intention on the part of the government to restore Calderon?—A. I do not think there was, not by force; but I do not know. You have got me in the realm of speculation now. I think the government could have sent its envoys as it did there to ask an explanation, and if it discovered that it was an insult, whether disclaimed or not, and that it was designed to be an insult, I think the government should look at the substance and effect of it rather than to the disclaimers made afterwards to avoid the consequences of the act. I supposed in some way we would contrive to maintain our self-respect.

Q. Then you do not think the government would have asked for the restoration of Calderon?—A. I do not say that. I thought the government would have been likely to ask for the restoration of Calderon, unless the act could have been explained and made to appear entirely reasonable and proper.

Q. If the restoration of Calderon had been asked and refused, would the government not have been obliged to follow up the request with force?—A. We would have backed down then as readily as to have done it before. I do not see why we could not back down when there was some reason for it, as well as to have done it when there was none apparently. I think that a nation that is disposed to do it can back out at any stage; can back down anyhow, assuming that it is backing down. You are questioning me upon a theory which I do not admit. I do not want to be understood as admitting that I believe that the policy of the department, in substance and effect, will be found to be a substantial reversal of American traditions and policy from the beginning. I believe before we get out of this we will find in some way that the American nation manages to maintain its respectability and predominance, and that we are not quite extinguished yet, and that this administration does not propose to be.

Q. Then you think we were reaching a position where we would have a chance either to back down or go ahead?—A. That is a metaphysical question somewhat, and still an entirely proper one. I think that unless we come to a dead stop, and the roll of the universe is arrested by a dash, we must either stop or go ahead.

Q. That is not an answer to my question.—A. I wish to answer the question; I do not want to evade it.

Q. I mean in respect to diplomatic action.—A. Yes; in respect to diplomatic action it must be continuous, successive, or interrupted; that is, we must either have stopped or have gone ahead in our diplomatic action.

Q. Do you know of any instructions given by the Navy Department to the American men-of-war in the South Pacific squadron which had any relation to the controversy between Chili and Peru?—A. No, sir; I do not know of any.

Q. You have not heard of any?—A. No, sir; I have not.

Mr. BELMONT. I have no more questions to ask, I think.

The CHAIRMAN. Mr. Lord, I believe, desires to ask a few questions.

By Mr. LORD :

Q. You have testified in regard to the interview of the 25th of July, in the evening, and the 26th of July, in the morning, between yourself, the Secretary of State, and Mr. Shipherd; what is your present recollection as to the length of the first part of the interview on the evening of the 25th.—A. I think we were in Mr. Blaine's house an hour or such a matter, I do not know but more. But he was engaged, as I recollect, and the actual interview, I should not think, was more than perhaps half an hour, though we spent more time in the house. It may not have been half an hour; it may have been something more; you know how those things are.

Q. You have testified that the interview of the next morning was a longer interview?—A. Yes; I think it was.

Q. How long did that continue, that is, the conversational part of it?—A. I should think it was an hour, or more.

Q. Then the whole conversation involved an hour and a half, assuming it as one interview?—A. Yes, sir; I should think so.

Q. At that time, you three talked over pretty fully the matter of Mr. Shipherd's interest in his Peruvian enterprise, did you?—A. Yes; I do not know but what I can say pretty fully.

Q. It is in the testimony that you were employed as Mr. Shipherd's counsel, and that through your instrumentality he had obtained that interview, and that the object was to influence the instructions about to be given to Minister Hurlbut; is that so?—A. No, sir; I have not so testified.

Q. No, it is not in your testimony; but it is in the testimony before this committee, that you were employed as counsel, and that the object of that was mainly to procure such an interview as that was then, and that it was for the purpose of influencing instructions to be given to the minister at Lima.—A. Any testimony to that effect is incorrect and inaccurate. The interview was for the purpose of ascertaining what was the policy of the government towards Peru and Chili, to present these claims, and to ascertain what action the government would take with reference to them. But the question assumes that we were there to influence instructions about to be given to General Hurlbut. We had no knowledge that any instructions were to be given to him of a general character, and we did not know any would be given with reference to these claims. But the claims being presented, Mr. Shipherd desired that such action as the government was willing to take, of course, should be communicated, and in that way we might influence instructions if it was decided to give instructions.

Q. This was on the 25th and 26th of July?—A. Yes, sir.

Q. And on the 4th of August instructions were given to General Hurlbut by the Secretary of State, were they not?—A. Yes; that was the date.

Q. Did you know of any instructions given to General Hurlbut between those dates, that is, after the 25th and 26th of July, and before the 4th of August?—A. I did not; I have no recollection of any given.

Q. In your testimony, referring to those instructions of the 4th of August, you say "The dispatch of August 4th from the State Department having reference to the Landreau claim and the Cochet claim was, I suppose, the result of these interviews in July?—A. Yes; I have no idea the dispatch would have been sent but for these interviews, at least not at that time.

Q. So that whether your interview was for the purpose of influencing those instructions or not, it is your opinion that the instructions were given in accordance with and as the result of those interviews?—A. Yes; those instructions with reference to the claims, I think, were the result of those interviews.

Mr. LORD. That is all I have, Mr. Chairman.

The CHAIRMAN. Does any other member of the committee desire to interrogate the witness?

Mr. DEUSTER. I desire to ask a few questions. (To the witness.) You said that these claims had not been rejected by Peru. Is it not a fact that they have been pending thirty, forty, or more years when Peru was in peace, and when Landreau and Cochet, both being Frenchmen, could have applied for aid to their government?—A. Yes; they were pending, as the evidence shows, for many years.

Q. Does it not seem to you that for both of these men to come and present their claims through American citizens, when Peru was really in distress, is a wrong against Peru as well as Chili?—A. No; the way it was proposed to present these claims I do not look upon as any wrong to Peru at all or to Chili. These claims, as I have stated, were in my belief substantially just, and the denial of payment by Peru had been a wrong during all these years, and its repetition was no relief from its character as a wrong. I supposed Peru had declined to pay, not because of the want of justice in the claims, but because of her own disposition to do injustice rather than justice to these foreigners. When an emergency should arise and she should deem it for her interest to pay them, I had no doubt she would do justice. Here seemed to be a state of things where she could help herself by doing right, and it looked to me as though the presentation of the claims at such a time was eminently proper and eminently right,

and further than that, quite encouraging, because the debtor could pay in such a way as to do good to itself, and therefore might be supposed ready to do so. It looks to me as though it was a benefit to Peru to present these claims along with a proposition to save her nationality and to relieve her future.

Q. Did you ever hear, or do you know, that Cochet had no legitimate son?—A. I had heard so. I have heard that this Gelacio was a natural son, and that Cochet had no lineal descendants but this natural son. I understood the natural son, however, was entitled to all the rights of a legitimate heir by the ordinary process of legitimation, and by the will of Cochet.

Q. You stated that the Cochet claim was presented by a respectable American citizen. I would ask you if that is Peter Hevner?—A. I do not recollect saying that it was presented by a respectable American citizen; did I say so?

Mr. DEUSTER. I think you did.

The WITNESS. I think not. I think I did not use that expression. But it is immaterial whether I did or not. I know nothing of Peter Hevner; I never saw him, I know nothing of his character or antecedents, and I do not remember that I ever knew the name—yes, I did; Mr. Shipherd, I remember, told me at some time that the claim came through a Mr. Hevner. But I knew nothing of the character of Hevner, and always supposed he was, and I have no reason to doubt now that he is, a good man. I do not know anything about him.

Q. So you never heard of his antecedents when he lived in Washington here before he went to Peru?—A. I did not know that he ever lived in Washington, and I know nothing of his history at all.

Q. You never heard that he was a kind of an adventurer?—A. I never heard anything of that kind until this investigation began, since which time almost everybody connected with these matters has been charged with being an adventurer or worse.

By Mr. WILSON:

Q. One question more. If the Peruvian Company succeeded in getting this government to extend its good offices for the recognition of the Cochet claim by Peru, and Peru should then reject that claim, what would be the purpose and policy of the Peruvian Company in an effort to get this government to enforce its recognition, or to prevent the conclusion of peace between Chili and Peru?—A. If that state of things should have arisen, of course it would have been dealt with at the time. It is always in the discretion of a government to decide for itself how far it may go in protecting the rights of its citizens.

Q. I beg your pardon. It is to be presumed that gentlemen of the ability of those who were in the debt of the Peruvian Government would not only consider the pending proposition, but they would look to the future and look to the contingency that might arise. Now if there was any policy or agreement or plan or conclusion arrived at as to what course they would then pursue, I would like to know it.—A. I do not know that there was, and I do not know that there was not. I should have expected that if Peru had agreed to pay these claims, and the company had been organized, and the American money had gone in there and American rights and interests become largely vested in Peru, and then Peru had failed in her international obligations, or refused to recognize her obligations, I have no doubt that our government would have taken care of her citizens. The Peruvian Company was like any citizen of the government, and it is fair to presume that individuals and governments will do their duty, and we run the affairs of this world on that presumption.

Q. Hence it was the policy of that company to get the government to take the initiative step and exercise good offices, and intervene in behalf of the Peruvian Company to secure, if possible, the recognition by Peru of the claim of the Peruvian Company?—A. I do not understand that at all.

Q. I understood you to say that.—A. No; I say that the position taken by the government, as I stated earlier, in the instructions of June 15, were deemed by Mr. Shipherd entirely satisfactory. It gave opportunity for him to send his commissioners to Peru, and to effect his agreement with Peru, to make that agreement the basis of raising money at home to pay the indemnity, and to thus relieve the Peruvians, and to enable this company to enter upon their peaceful pursuit of a commercial project and its prosecution in the future, and there could be no presumption that there would be wars growing out of that, any more than if you should act upon the presumption that wars will grow out of our making arrangements of that kind for our citizens, or with other nations themselves, and to stop all intercourse between nations and the individuals of one nation with another.

Q. Then I understand you to say that the use of force had not been contemplated in the event that the initiative had failed—the first step taken?—A. Not at all; that is quite another consideration.

By Mr. BELMONT:

Q. This correspondence between you and Mr. Shipherd is still a matter that does not seem very clear to me. Did it not refer to the action of this government in some way?

Were there not letters passing between you and Mr. Shipherd referring to the plans of the Peruvian Company?—A. I have testified three times with reference to the correspondence, and I do not wish by negation and indirection to testify to its contents. I have stated what I have stated.

Q. You refuse to produce it?—A. I decline to produce our professional and personal correspondence.

The CHAIRMAN. This closes the examination of Mr. Blair. The taking of testimony will be resumed by the subcommittee in New York some time this week. I am unable to state at this time just when the committee will go there. The committee will now adjourn until its regular meeting at ten o'clock Friday morning.

Adjourned.

NEW YORK, *May* 10, 1882.

The subcommittee appointed by the Committee of Foreign Affairs of the House of Representatives met at two o'clock to-day at the New York Hotel, in the city of New York, in the rooms occupied by Mr. Robert E. Randall, the meeting at that place being rendered necessary by the inability of the witness to leave his bed.

Present, Mr. Kasson, chairman of subcommittee, and Messrs. Dunnell, Wilson, and Belmont.

Witness, having been duly sworn, testified as follows:

By Mr. KASSON:

Question. Be good enough to give to the reporter your name and residence, Mr. Randall.—Answer. Robert E. Randall, New York Hotel, New York, City.

Q. Do you know of any company or have you had connection with any company which has had relations to property of any kind in Peru?—A. Yes, sir.

Q. Will you be kind enough to name the company?—A. In the first instance, La Société Générale de Crédit Industriel et Commercial, and in the second instance, La Compagnie Financière et Commerciale du Pacifique.

The resolution was then read under which the committee is authorized to make the investigation.

Mr. KASSON. Under that resolution, Mr. Randall, I will ask you first to state if you are acquainted with any minister of the United States abroad who had any relation with business transactions connected with the Peruvian Government or with the operations of our government with Chili and Peru?—A. If the question is intended to apply to the minister in France, yes; I know personally Mr. Morton. I also knew personally Mr. Hurlbut, and I also know personally General Kilpatrick.

Q. Will you state whether of your own knowledge either of these gentlemen had any relations with any business operations in Peru at the time they became ministers or since?—A. No, sir; except in their diplomatic capacity.

Q. Do you know of any personal interest in these operations that either of these ministers had?—A. I have no personal knowledge of their having had any personal interest other than that to which I presume your question refers, the contract of Morton, Bliss & Co.

Q. I will ask you to state generally what you know respecting any relations that Mr. Morton has had with any such business operations in Peru, and under that question be good enough to state all that you do know on that head.—A. With your permission, I would like to state distinctly the connection which I have had in reference to Chili-Peruvian matters. I desire to state that so far as I have had any connection with the adjustment of existing difficulties (the war) between Chili and Peru, it has been as legal counsel, representing, in the first instance, La Société Générale de Crédit Industriel et Commercial, and subsequently, as the offspring of that Société, the Compagnie Financière et Commerciale du Pacifique, organized in compliance with a contract made by the Republic of Peru with the Crédit Industriel on the 7th of January, 1880. I also was the representative of a certain portion of the bondholders of Peru, these bondholders having purchased the national bonds of the country, either by original subscription or in the open market. The proceeds of these bonds were paid to Peru, and have been expended by her in internal improvements, especially in railway docks, &c.; the bondholders whom I represent are those resident in Holland, France, and Belgium, and a portion of those resident in Great Britain, holding in all more than one-half of Peru's bonded debt. More than one-half of the guanos and nitrates that had been shipped to Europe had been used in France. Those whom I represent have no knowledge of or connection with any claims of any kind against Peru (especially do I refer to what are known as the Cochet and Landreau claims), and they have no sympathy with nor knowledge of them, nor with what may be termed the Shipherd Peruvian Company.

In September, 1880, at the time I was employed as counsel by the Crédit Industriel, with reference to business with the United States, I was instructed, amongst other

things (they having a contract with the Peruvian Government for the sale throughout the world of all the guano and nitrates that that country could produce, subject to two then existing contracts in the West Indies, which at their expiration lapsed under said contract into the hands of the *Crédit Industriel*), and they instructed me to secure a first-class firm for an agency in the city of New York for the disposition of the guano and nitrates that would be required in the United States.

Q. By they, do you mean the bondholders or the *Crédit Industriel*?—A. The chairman of the bondholders committee and the *Crédit Industriel*; it is a joint representative interest, as I will explain hereafter. They suggested to me at that time the firm of Morton, Bliss & Co., since they had been in negotiation for some six months previous with Morton, Rose & Co., of London. On my return to the United States, as I saw no immediate necessity for an agency, I did not take any steps in that direction until the agents of the *Crédit Industriel* reached this country, Count de Montfenand and Francisco de Paulo Suarez. They stated to me that they were again requested to have me secure a proper financial agency in the city of New York. Under these second instructions—

Mr. KASSON. Be good enough to give about the date.

A. The last instructions were in the month of January or February, 1881. In consequence of that I subsequently applied to Maitland, Phelps & Co., and saw Mr. Phelps; laid the entire matter before him, together with the contracts and all the papers pertaining to the subject. Mr. Phelps expressed to me his disposition to take the matter in hand, but stated that he would have to see his partners first. The same evening I received this note, which I will read:

22 AND 24 EXCHANGE PLACE,
New York, May 19, 1881.

MY DEAR SIR: With one of my partners I have read over with all the attention that the important matter deserves the papers you left with me relating to the agency in this city of the "Financial and Commercial Co. of the Pacific" of Paris, for the sale of guano and nitrates, and I lose no time in informing you that the business will not at all suit our firm.

I am grateful to you for the honor done us in offering it to us, and you may depend that what has transpired between us will be strictly confidential.

I am, my dear sir, yours very truly,

ROYAL PHELPS,
Of Maitland, Phelps & Co.

R. E. RANDALL, ESQ.,
New York Hotel.

I saw Mr. Phelps in reference to this matter, and he stated in the first place that it was a new business for the firm to undertake; that they would have to employ additional clerical aid, and that the compensation which I offered was not satisfactory, and would make no return to them, especially as the business was so very light in the United States. I then asked Mr. Phelps to suggest some firm to apply to—asked him if he knew of any house that he could recommend. He stated that (on inquiry) the only two houses that he could suggest were Amswick & Co., or Hobson, Hurtado & Co., who had, as he had been informed, been in that line of business—the business of the sale of nitrates and guano. I knew nothing relative to the firm of Amswick & Co., and I ascertained that the firm of Hobson, Hurtado & Co. had dissolved some months previous, but I understood at the time that while Hobson, Hurtado & Co. were the agents of Peru for the disposal of nitrates and guanoses, the financial portions of the business had been transacted entirely for the ten years and upwards that they had charge of that business, by Morton, Bliss & Co. as financial agents. In consequence of that I called a few days subsequently with Mr. Suarez, who was agent (I was counsel) for the *Crédit Industriel*. I called at Morton, Bliss & Co.'s, and saw Mr. Bliss. We had a lengthy interview on that subject. He was perfectly at home on the subject—thoroughly so—more so than I was, but he asked that we should call again the next day, when he would take the liberty of asking Mr. Hobson to be present. That interview took place, and shortly after, at one of the interviews, Mr. Bliss and we came to an understanding, which was subsequently embodied in a contract which was executed in Paris.

Mr. DUNNELL. When was that contract made?

A. Do you refer to the execution of the contract itself, or the understanding with Mr. Bliss, because the understanding was reached during the month of May or probably early in June, 1881.

Mr. KASSON. Here in the city of New York?—A. Here in the city of New York.

Mr. KASSON. Then in that connection it might be well to state that it was really reduced to writing about that time.—A. Yes, sir. The proposition was in writing and as your first question referred to whether any representative of this country abroad was interested, it is only proper to state here that I never saw Mr. Morton at any

time during any of these interviews as he was absent from the city. He was not in New York at the time, as I understood.

Mr. KASSON. Before you pass from this subject, I observe in your correspondence with Mr. Phelps that he speaks of every one of the companies, the "Financial and Commercial Company of the Pacific." If there is a distinction, as I presume there is, between the two, will you state whether you represented in that connection the "Financial and Commercial Company of the Pacific" or the "Crédit Industriel?"—A. I represented both. Under the contract made by Peru with the Crédit Industriel there was a provision that the Crédit Industriel would organize a company, a financial and commercial company which should take exclusive charge of this business. That company was organized and capitalized through the "Crédit Industriel" under the title of the "Compagnie Financière and Commercial du Pacifique," so that the "Compagnie du Pacifique" is really the "Crédit Industriel."

Mr. KASSON. Simply an organization at this end of the "Crédit Industriel."—A. Yes, sir.

Mr. KASSON. With that explanation, proceed, sir.

THE WITNESS. It was simply a branch of the Crédit Industriel. After the correspondence which took place between myself and parties in Paris, we came to an understanding. This was some time in June, 1881. On the 9th of July, in connection with this contract, as well as other matters connected with the business in hand, I visited Paris. In the mean time I was informed by my clients that they had made a contract, so far as shipping guano and nitrates is concerned, with Geautrean & Co. The main house is in Paris, with branches in Valpargiso and Callao. It has a high standing commercially and financially, and has been in existence many years. I discussed these subjects with them, and they accepted the contract on basis of my agreement with Mr. Bliss, but the execution of it was delayed in consequence of my having no authority, and no one being in Europe to represent Morton, Bliss & Co.; for during all these proceedings, you will bear in mind, I was representing the French parties, and not Morton, Bliss & Co., and there was no authority to any one to execute a contract for Morton, Bliss & Co., and my clients were loath to sign any paper that was not simultaneously executed by the other contracting party. The contracts were subsequently approved by me, not executed. The contracts were reduced to writing, and I approved of them for Morton, Bliss & Co., in consequence of written authority which Mr. Bliss sent to me for that purpose.

By Mr. BELMONT:

Q. You received the written authority while you were in Paris?—A. Yes, sir. The delay in execution was because I had no authority, and let me say here that pending that I was taken very ill with the sickness I am now suffering from, and my physician immediately ordered me to Contrexeville, in France. I remained at Contrexeville four weeks; that carried us over into September; but, in consequence of the correspondence between Gautreau & Co. and myself, I went to Paris about the 25th or 26th of August, and at that time everything was consummated—about the 27th or 28th. I see the papers are signed the 29th of August. I ran up to Paris for two days, and the contracts were approved of by me at that time in behalf of Morton, Bliss & Co. in conformity with this written authority.

By Mr. KASSON:

Q. This is a true copy?—A. A true copy; yes, sir.
(Copy.)

NEW YORK, Aug. 10, 1881.

ROBERT E. RANDALL, Esq.:

MY DEAR SIR: You are hereby authorized to sign for and on behalf of our firm, the contracts as we have agreed between Messrs. P. L. & H. Gautreau, of Paris, and ourselves, for the sale of guano and nitrates in the United States, the conditions being those made with you by John Bliss of our firm in New York, and accepted by Messrs. Gautreau.

We remain, very truly yours,
(Signed)

MORTON, BLISS & CO.

By Mr. KASSON:

Q. That brings you to the date of the signing of the contract between Morton, Bliss & Co., and the firm of Geautrean & Co., and not with the Crédit Industriel directly?—A. No, sir; the contract itself shows. It has been published.

Q. Have you a printed copy of that that you can verify yourself?—A. Probably it would be better to hand the original contract to the reporter, that I signed.

Mr. BELMONT. Will you read the memorandum?

The WITNESS. Prior to reading the memoranda I would like to state that while I had the authority to execute this for Morton, Bliss & Co., I declined to assume that authority for the reason that I was the representative of clients who were parties to

the contract. I really only "APPROVED," and it was accepted. Messrs. Geautreau & Co. executed under my delivery of that contract, together with the original letter of authority from Morton, Bliss & Co. They executed both the original contracts, that is, the duplicates, and delivered to me as against that contract two original contracts executed by their firm. These two contracts I forwarded to Morton, Bliss & Co., at New York, one of which I instructed them to return to me. On those being returned to me, I delivered them—the originals—to Messrs. Geautreau & Co., and they returned to me the papers which I had approved of, and which I have just handed to you, and they—the originals executed by Morton, Bliss & Co., and the papers signed by me—are *verbatim et literatim*, with the exception of the indorsement at the bottom. In both the contract and the "annexe," as it is called, are these words:

"I approve of the above by written authority of Messrs. Morton, Bliss & Co., hereto attached, by which I am directed to execute the same on their behalf.

"(Signed)

ROBERT E. RANDALL."

Mr. BELMONT. I think the memorandum itself would be important in the evidence.

The WITNESS. I understood that you wanted me simply to read my approval.

Mr. BELMONT. Well, if you will let me look at it I can tell.

The witness asked the stenographer to read the original question of Mr. Kasson, as follows:

"State if you are acquainted with any minister of the United States abroad who has had any relation with business connected with the Chilean and Peruvian Governments, or with the operations of our own government."

The WITNESS. I think, Mr. Kasson, it might be well for you to put the question again in a little different form.

Q. State if at any time during these negotiations, up to the signing of the contract, Mr. Morton had any personal connection with the negotiations, within your knowledge.—A. Shortly after Mr. Morton reached Paris, I called on him and referred to the negotiations with the company on Pacific, and Messrs. Geautreau & Co., as their representatives, and Morton, Bliss & Co. Mr. Morton very politely, but very positively, said, "Mr. Randall, that is a matter which you have conducted through Mr. Bliss, so far as my firm is concerned, and I prefer, for many reasons, that it should so continue. I do not know anything, and in fact I do not want to know anything about the matter whatever." I think those were almost the identical words that he used; they were certainly as emphatic and pertinent. Subsequently I called on him and apologized to Mr. Morton for again troubling him with the matter, and informed him my object was simply to inquire if he had a cipher code with his firm. He stated to me that he had, and I said it was very important that I should inform Mr. Bliss at once of a certain proposition which had been proposed by Mr. Geautreau, which had not been discussed in New York, and I asked him whether he would send that to his firm in cipher. He said, "Certainly; write it out and I will send it with pleasure." I do not know how often he did that; not over three or four times, however; but these cablegrams referred to whether Morton, Bliss & Co. would advance the freights—the insurance. I think it was that—I have not copies. Mr. Bliss said he would do so on condition that six per cent. interest was paid. As money was only worth about 3 or 3½ per cent. in Paris, Geautreau & Co. declined, and the contract was executed as you have it.

Q. None of the terms of the contract, as I understand you, were in any way advised or settled by Mr. Morton himself?—A. No, sir; and I may say, to corroborate my statements about that, that it was understood distinctly by parties in Paris that Mr. Morton did not know anything about that matter, and was not really—I was going to say—a party to it. All my interviews in Paris were entirely personal. While at Contrexeville I received three or four letters on this subject, which, as they state so clearly the position which I occupied in this matter, I desire to call the attention of the committee to them. Here is one—a letter from H. Geautreau, the active member of the firm:

PARIS, August 17, 1881.

DEAR SIR: I inclose first original of our United States contract. I think it necessary that a clause referring to the memorandum to be annexed to it be added before the contract is sent to the United States, and accordingly I hope you will return it to me for insertion of such a clause.

I must call your attention to the blank word in clause 3. It has not been possible to make out what that word was in your copy.

I remain, dear sir, yours very truly,

H. GAUDREAU.

The WITNESS. At the time I received this I was with Mr. Guillaume, the chairman of the continental Peruvian bondholders' committee, at Contrexeville, and he also received from Mr. Geautreau a long letter in which there was a proposition to the effect that the contract should continue for six years in case the United States should not

mediate or intervene in the affairs of South America. The "Annexe" sent with this I returned and said that I could not see any reason why it should be accepted, and that, while occupying a two-fold position, I was anxious to consummate the contract in Paris at once; that this limitation was a new condition altogether; that it had never been communicated by me to Morton, Bliss & Co., in New York; that I did not see the utility of it, and, therefore, I thought that it should be omitted, but stated that if they insisted upon it, I would have to communicate with New York, and as I only expected to remain in Europe a week or ten days, the matter could not be consummated by me, and I therefore saw additional reasons for not acceding to their proposition. The following is the letter I received:

PARIS, August 23, 1881.

Mr. ROBERT E. RANDALL,

Contrexeville:

DEAR SIR: Your favor of 21st inst., with inclosure, is to hand.

I regret to say that there has been a misunderstanding, on your part, on the subject of the contract being executed by us at first, and then sent to the United States for execution by Messrs. Morton, Bliss & Co. This could never be done, as a contract must be signed simultaneously by both parties to it. It was said by me, and, as I thought, agreed to by you, that one original should be sent to the United States, there to be signed by Messrs. Morton, Bliss & Co., and then returned to us through yourself or Mr. Morton, against delivery, from hand to hand, of the second original duly signed by my brothers and myself each, each party having thus in their possession an original of the contract signed by the other. I accordingly beg to return the contract to you.

As to the question of memorandum, I cannot possibly agree with you; it is absolutely necessary that the duration of the contract be stipulated in it, or, at least, as this has not been done in the body of the contract itself, that a memorandum be added as integral part of it. I shall send by next mail to Mr. Guillaume a draft of additional articles, as a proposition, which I sincerely hope may be found by you acceptable.

I regret the delay which has taken place, the responsibility of which cannot be charged upon me, as it was caused in great part by the illness which I have heard, with sorrow, that you underwent, and I trust that by mutually understanding each other we may bring the matter to a speedy termination.

Yours, most truly,

H. GAUTREAU.

The WITNESS. I made no reply to this letter, but went to Paris myself, saw the parties, and they stated that the reason why they required this "Annexe" or addendum was that in case the United States did not in any manner become connected with the settlement of the difficulties between Peru and Chili, it might be that Morton, Bliss & Co. would decline to act as agents for the sale of nitrates and guanos in the United States. In such case they would be very much embarrassed in finding a house of equal financial standing; that it would undoubtedly cause considerable delay; and that under these circumstances they thought it but just that Morton, Bliss & Co. should agree to act for a limited period; and owing to the distance of the voyage (all the vessels having to go around the Horn to New Tora City, and orders going out, and other things connected with it), they said they could not see that three or four years, or five or six years, should be any objection; in fact they required it for their own protection. After considering the matter for a day, and as I did not see any reason why Morton, Bliss & Co. should object that this contract should be binding upon them for a period of six years, especially as Geautreau & Co. had conceded to them the usual commission allowed, of three per cent., should be increased to five per cent., I without any authority assented to what appears in the addendum that Morton, Bliss & Co. should bind themselves to act as agents for six years.

The next letter in regular order is as follows:

PARIS, August 30, 1881.

Mr. ROBERT E. RANDALL,

Contrexeville:

DEAR SIR: I beg to hand you herewith copy of the United States consignment contract, which please return to us with your signature as representative of Messrs. Morton, Bliss & Co., together with letter of said gentlemen empowering you to so sign in their name.

Inclosed also I send you draft of the letter you agreed to sign. I will remit to you by to-morrow's mail original of the contract to be forwarded to the United States for Messrs. Morton, Bliss & Co.'s signature.

Yours, very truly,

H. GAUTREAU.

P. S.—The copy signed by you will be returned to you against original signed and executed by Messrs. Morton, Bliss & Co.

As soon as your copy is received I shall forward to you first original with my own and my brother's signature.

H. GAUTREAU.

The WITNESS. The letter referred to in the foregoing was simply an agreement that Morton, Bliss & Co. would not undertake the sale of guano and nitrates for anybody else in the United States without the consent of Messrs. Gautreau & Co. The next day I received this letter, which was the last:

PARIS, August 30, 1881.

Mr. ROBERT E. RANDALL,
Contrexeville:

DEAR SIR: I beg to confirm my letter of yesterday, and hand you, inclosed, original of the United States consignment contract and memorandum annexed, to be forwarded to New York for Messrs. Morton, Bliss & Co.'s signature.

Yours, very truly,

H. GAUTREAU.

The WITNESS. That I believe, sir, is the history of the transaction.

Mr. BELMONT. I believe the memorandum is the only part of the contract that refers to mediation?

The WITNESS. Yes, sir.

Mr. BELMONT. That is the reason I wanted it made part of the evidence.

Mr. KASSON. The original memorandum referred in no way to the intervention of the United States?

The WITNESS. No, sir; I believe not.

Mr. KASSON. The reporter will take a copy. I will now only read the memorandum.

"Memorandum to the contract for the sale of the guano and nitrates, entered into on the ———; " the date appears to be blank.

The WITNESS. It was filled in in New York.

Mr. KASSON. It was in effect on the 31st of August?

The WITNESS. I cannot tell you that, sir. I made no note of that. It was executed subsequently in New York.

Mr. KASSON (continuing). "Between Messrs. T. L. & H. Gautreau, of Paris, and Messrs. Morton, Bliss & Co., of New York."

The WITNESS. In further answer to Mr. Belmont's inquiry, as I understand, I will say that that (the annexe), as you will see by this correspondence, was made a part of the contract with Messrs. Gautreau & Co.

The following is a copy of the original contract:

Memorandum of an agreement entered into this ——— day of August, A. D. one thousand eight hundred and eighty-one, between Morton, Bliss & Co., of New York, United States of America, and Messrs. Pedro, Louis, & Henri Gautreau, of Paris, France.

Whereas, The said Messrs. Gautreau did, on the 20th day of January, 1880, enter into an agreement or contract with the "Société Générale de Crédit Industriel & Commercial," by which they were appointed the general agents of said Société Générale de Crédit Industriel & Commercial, or its assigns, for the sale of the guano and nitrates, which rights, concessions, and authority had been granted and ceded to and conferred upon the Société Générale de Crédit Industriel & Commercial by the Peruvian Government, under agreements or contracts entered into on the 7th day of January, 1880, and the first and eighth days of February, 1881, and which said rights, concessions, and authority were subsequently assigned, transferred, and set over to the "Compagnie Financière & Commerciale de Pacifique," on the 11th day of February, 1881, by the said Société Générale de Crédit Industriel & Commercial.

Now, therefore, it is agreed by the said Messrs. Morton, Bliss & Co., and Messrs. Gautreau,

First. That the said Messrs. Gautreau, under the powers and authority granted to and vested in them by the agreements and contracts hereinbefore mentioned, by these presents do appoint and constitute Messrs. Morton, Bliss & Co. the sole agents in the United States of America, for the sale of guano and nitrates, which constitute the objects of the contracts aforesaid of the "Société Générale de Crédit Industriel & Commerciale" and the "Compagnie Financière & Commerciale du Pacifique." And, in consideration of the services to be rendered by said agents as aforesaid, Messrs. Gautreau, for themselves, and as the representatives of the Société Générale de Crédit Industriel and Commerciale" and the Compagnie Financière & Commerciale du Pacifique," agree to allow pay, or cause to be paid, to Messrs. Morton, Bliss & Co. a commission of 5 per cent. on the gross sales of the guano and nitrates, the same to be chargeable against each allowed sale.

Second. In case, for any cause whatsoever, the contracts aforesaid between Messrs.

Gautreau and the "Société Générale de Crédit Financier & Commercial" shall cease to exist, then, and in such case, this agreement or contract will become void.

Third. The guano and nitrates will be shipped direct to Messrs. Morton, Bliss & Co. by Messrs. Gautreau at such times and to such ports of delivery as Messrs. Morton, Bliss & Co. shall require and direct, and in such quantities as the markets shall demand, the same to be a matter of mutual understanding between the same. But said Messrs. Morton, Bliss & Co. shall always be able to require Messrs. Gautreau to deliver an equal quantity to the amount sold the preceding year; provided that there shall not be in store the said quantity unsold. And the directions for the delivery shall be made so that the shipments shall not arrive in the United States over six months in advance of the period of sale, Messrs. Gautreau, however, not being responsible to Messrs. Morton, Bliss & Co. in case of non-delivery, unless the same shall be due to laches on the part of Messrs. Gautreau. The guano and nitrates will be delivered to Messrs. Morton, Bliss & Co. alongside of the vessels at the designated port of delivery, free from all charge and expense, including cost of bags, the same in every instance being defrayed by Messrs. Gautreau, and all subsequent charges, and expenses of handling and warehousing, if Messrs. Gautreau shall so require, shall be advanced by Messrs. Morton, Bliss & Co., who shall reimburse themselves such advances with interest at the rate of 5 per cent. per annum out of the proceeds of the sales, when made, of each distinct account sale.

Fourth. Messrs. Morton, Bliss & Co. will act under the directions and instructions of Messrs. Gautreau, who shall specially have the authority to fix and name the prices, wholesale and retail, at which Messrs. Morton, Bliss & Co. shall have power or authority to sell the guano and nitrates. It is understood, however, in case no instructions are given and received, then Messrs. Morton, Bliss & Co. are authorized to act on their own judgment for the best interests of all concerned. All sales are to be for cash, at least so far as Messrs. Gautreau are interested; but if Messrs. Morton, Bliss & Co., for any cause whatsoever, should prefer to sell on time-credit, they are at liberty to do so; such sales, however, will be at the sole risk of Messrs. Morton, Bliss & Co., and the consideration previously agreed and fixed shall, in every instance, be credited to and accounted for to Messrs. Gautreau, but not to be payable until the time shall have matured for the payment of such time-sales; provided, however, that no sales on time shall be at a longer credit than ninety days.

Fifth. Messrs. Morton, Bliss & Co. will make out and forward to Messrs. Gautreau, every three months, a quarterly statement and account of all transactions. They shall remit, upon sales being effected, all moneys collected, payable to Messrs. Gautreau, by virtue of this contract, by first-class bills or drafts on Paris and London. The discounts, charges, or benefits that may accrue in the negotiations of these bills or drafts shall be for the account of Messrs. Gautreau. Messrs. Morton, Bliss & Co. will further furnish to Messrs. Gautreau, every fortnight, the necessary data to enable them to make a fortnight statement of the guano and nitrate received, sold, or in store during such period, together with the name of the purchaser or purchasers, and of the amount purchased, as they are bound to make to the Société Générale de Crédit Industriel & Commercial, or its assigns, by their contract of the 20th day of January, 1880.

Sixth. Messrs. Morton, Bliss & Co. agree to use their best efforts to prevent the guano and nitrates being manipulated, and that during the existence of this contract and agreement they will not become interested in any article or articles that may in any manner compete with the guano or nitrates that shall be consigned to them.

Seventh. Messrs. Morton, Bliss & Co. will account to Messrs. Gautreau for one-half of all moneys that may be realized or received under charter parties on outward cargoes from the vessels which have brought the guano and nitrates to the United States.

Eighth. Messrs. Morton, Bliss & Co. will collect, free of charge, for account of whom it may concern, all other commissions or sums of money stipulated in the charter parties or otherwise due by the vessels.

Ninth. It is further understood and agreed that if it should be deemed advantageous by the Compagnie Financière and Commerciale du Pacifique to mix and manipulate, or in any manner prepare the guano and nitrates for sale, then Messrs. Morton, Bliss & Co. shall be the only parties who may be authorized to so mix and manipulate or prepare the guano and nitrates for sale.

Done in duplicate, in Paris, on the twenty-seventh day of August, one thousand eight hundred and eighty one, and in New York, on the —.

The following is the memorandum:

Memorandum to the contract for the sale of the guano and nitrates, entered into on the — day of August, A. D. one thousand eight hundred and eighty-one, between Messrs. T. L. and H. Gautreau, of Paris, and Messrs. Morton, Bliss & Co., of New York.

It is further declared and stipulated that the said contract shall continue in full force and effect for the period of the existence of the contracts entered into on the seventh of January, 1880, and the first and eighth of February, 1881, between the Peruvian Government and the Société Générale de Crédit Industriel and Commercial,

but in case that the said contracts should fail to become operative and effective in consequence of the failure of the United States to mediate between Chili, Peru, and Bolivia, and thus to secure peace and the recognition of the concessions, rights, and privileges granted to and secured by the contract above mentioned, then the said contract between Messrs. Gautreau and Messrs. Morton, Bliss & Co. shall cease and terminate at the expiration of six years from the date of said contract.

It is understood that in case the contracts aforesaid of the 7th of January, 1880, and the 1st and 8th of February, 1881, shall be modified or altered with the consent of the *Compagne Financiale et Commerciale du Pacifique*, now substituted in the place and state of the *Société Générale du Credit Industriel and Commercial*, such modifications and alterations shall in no manner affect or invalidate the contract between the parties, dated the ———.

It is furthermore expressly and formally declared that the present agreements signed and executed simultaneously with the aforesaid contract dated this day, for the consignment and sale in the United States of the guano and nitrates, shall be held to form an integral part of said contract, and that all stipulations contained in both contracts or agreements shall be considered in their totality as belonging to one single contract.

Done in duplicate, in Paris, on the twenty-seventh day of August, one thousand eight hundred and eighty-one, and in New York on the ———.

Mr. BELMONT. Now, I want to ask as to the period of time covered by these negotiations. Can you say about what time they began with Morton, Bliss & Co., of New York, and about what time the contract was finally signed in New York?

The WITNESS. I can only fix the negotiations relatively as commencing with Morton, Bliss & Co. in May, since it was after Maitland, Phelps & Co. declined the contract on the 19th of May. They terminated when I received the papers back from Morton, Bliss & Co., somewhere about the 1st of October; I cannot fix the exact date positively.

Mr. BELMONT. Never mind; it is not important.

The WITNESS. I can fix it on reflection a little more accurately than that, because I sailed on the 27th of October from Liverpool, so it must have been in October—early part of October.

Mr. KASSON. They commenced then, before Mr. Morton's appointment as minister?

The WITNESS. In New York? No, sir; after. I understand that Mr. Morton was appointed in March.

Mr. KASSON. Well, it is not particular; that is something we can verify. But during all this time you had no personal interview on the subject with Mr. Morton, except that to which you refer as taking place in Paris.

The WITNESS. I have had no interviews with Mr. Morton before or since, except those I have mentioned. And further than that, understanding the question, I desire to add that I was in no way influenced by the fact that Mr. Morton was appointed minister to France, but the documentary evidence will show that I applied to Maitland, Phelps & Co. in May to take this agency, and that was after the appointment.

Q. Had Mr. Morton ever examined the written contract or "Annexe," to your knowledge?—A. To my knowledge, never.

Q. He declined, you say, to have anything to do with any of the negotiations?—A. He positively declined, and referred me to Mr. Bliss.

Q. Did you ever ask Mr. Morton to use his influence with France or with any other South American government on this subject?—A. I saw Mr. Morton on one occasion at the request of Dr. Rosas, the representative of Peru in Paris. I saw him with Dr. Rosas, and the object was to have Dr. Rosas recognized as representing his government—to have Mr. Morton use his "officious" influence——

Mr. DUNNELL. His good offices?

The WITNESS. No; the word is "officious"—his officious influence to have Dr. Rosas recognized as the minister at Paris, inasmuch as Mr. Elmore had been recognized as the representative of the Calderon Government here or at Washington, and Dr. Rosas thought that he (Mr. Morton) should exercise his influence to secure his (Rosas's) recognition there, in France. Mr. Morton declined to so do, as he had no instructions from his government upon the matter, but subsequently Mr. Morton informed me that when he had subsequently an interview with President Grévy, on the invitation of the President, he took occasion to say that as the United States had recognized Mr. Elmore, why should not Dr. Rosas be recognized in Paris, if the French Government was anxious, as he was then informed, and proposed to unite with the United States in organizing a permanent government in Peru? I understood Mr. Morton saw President Grévy twice.

By Mr. KASSON:

Q. Is that the whole extent of Mr. Morton's connection with the subject, so far as it was done at your request?—A. Yes, sir; or at the request of any other party, so far as I know, and I was cognizant of all that took place, being in daily communication with all parties in Paris connected with this affair, both the representative of Peru as well as my own clients.

Q. Do you know of any other effort to influence Mr. Morton from any other quarter than that you have stated?—A. None.

Mr. KASSON. One other question, sir, if you please, and I will turn the inquiries over to the other members of the committee. A branch of our inquiry is touching certain papers that were lost from the files of the State Department, not touching your company at all, but referring to another matter; but I inquire of each witness whether they know of their own knowledge anything of the manner in which these papers were lost from the State Department files?—A. No, sir; I do not. I have no knowledge of them.

The WITNESS. I beg to say that if your committee will be here to-morrow I should be glad to see you and answer as to any other points. I am very energetic, but I do not want to do too much to-day in my weak condition of health.

Mr. KASSON. We are willing to act upon your wishes entirely, Mr. Randall; just suit yourself.

Mr. WILSON. Your examination has been very exhausting, Mr. Randall, and I do not want to weary you. I would like, however, to ask you one or two questions, as I desire to be a little more general. I want to ask you whether you have any knowledge of any act or declaration of Mr. Morton since he became minister plenipotentiary of the United States by which he became personally interested in or improperly connected with any business transaction in which the intervention of this government was requested or expected?—A. No, sir.

Q. Have you any knowledge from any creditable source that Mr. Morton was ever, at any time before or since his appointment as minister plenipotentiary, connected with any business transaction in which the interposition or intervention of this government was requested or expected?—A. No, sir; I have no knowledge whatever.

Q. Have you any knowledge of any fact or transaction which would tend to discredit Mr. Morton's character or standing as a minister plenipotentiary of the United States?—A. I have not.

Mr. WILSON. That is as broad as I will make the general questions now.

Mr. DUNNELL. This contract which was made with Messrs. Morton, Bliss & Co., is it still in force?

The WITNESS. I understand that it is, sir.

Q. Is the firm of Geautreau & Co. a part of the Crédit Industriel?—A. No, sir. They are simply the agents employed by that company for the purpose of attending to the shipments, or the details of shipments, of nitrate and guano to the markets to which they may be consigned.

Q. How long was Suarez, and this other gentleman that you speak of, in the United States?—A. I telegraphed for them—will you allow me to look at this record? The date is in here.

Mr. KASSON. Certainly, sir.

The WITNESS. On the 25th of October I cabled to Paris that my clients should send a financial agent here *en route* for Peru, and I think they came out in December or January.

Mr. DUNNELL. That was in 1880?

The WITNESS. Stop; I think I can give you the date. They reached Boston the middle of January, 1881.

Q. Did you ever have an interview with Secretary Evarts on the mediation?—A. I had, sir.

Q. Had you an interview later with Secretary Blaine?—A. Yes, sir.

Q. Were your interviews personal?—A. Yes, sir. I had frequent personal interviews with Mr. Evarts and Mr. Blaine.

Q. Was there any correspondence between you and Mr. Evarts?—A. There was no correspondence.

Q. Was there any between you and Mr. Blaine?

The WITNESS. Allow me to correct my statement so far as Mr. Evarts is concerned. I furnished him with certain papers, and in person handed to the Secretary and furnished the department with certain data and certain papers. I think I furnished duplicate copies, or our agents did, to Mr. Blaine, when he came into office, of the same papers.

Q. You had personal interviews with Mr. Blaine?—A. Frequently, sir.

Q. The gentlemen you refer to are not now in this country?—A. No, sir; Count de Montferrand left here in May, 1881, for Hayti; M. Suarez has been backwards and forwards two or three times.

Q. Where are the chief officers of the Crédit Industriel residing?—A. In Paris.

Q. That is the seat — A. Yes, sir; that is the home of the society or of the bank.

Q. How long has that been in existence?—A. I should think some twenty years.

Q. Do you understand that the propositions of that society are still in force; are they still pending?—A. Yes, sir. If you would like, sir—for it is a long story—I shall be glad to give to the committee to-morrow, or any other time, their propositions and wishes in this affair.

Q. I notice, Mr. Randall, that these letters to Mr. Evarts and Mr. Blaine are very emphatic and earnest letters. They press very hard upon the State Department the importance of negotiations or mediations on the part of the United States, and, of course, it was for the financial interests of the society that the United States should act.—A. It was not in their financial interest that the United States was asked to act; but I have made some heads here, so far as my connection is concerned, and why I presented the matter to Mr. Evarts and my interviews with him, and if you would like me —

Mr. KASSON. I was warned by the doctor not to keep you too long to-day, and I will very cheerfully accept your suggestion, and we will resume your examination to-morrow.

Mr. BELMONT. Well, I have only a few questions. It is only in order to establish the line of examination as far as possible, but I do not want to tire you.

The WITNESS. Not at all, sir; if you won't be very long.

Mr. BELMONT. I wanted to know when you first became connected with the enterprise.—A. In September, 1880.

Q. And when did you first introduce it to the State Department?—A. In October, 1880.

Q. How was it received?—A. Favorably, sir.

Q. Did the Crédit Industriel take any steps to give the State Department full information in regard to it? I ask that because you said you cabled for the agents.—A. Yes, sir.

Q. Upon whose suggestion did you cable?—A. I cabled at the suggestion of Mr. Evarts.

Mr. BELMONT. I shall endeavor to shorten this as much as possible. I will now ask what was the condition of the negotiation when Mr. Evarts went out of office?—A. Well, sir, I do not exactly see the drift of your question.

Q. Was it at that time favorably considered?—A. Undoubtedly. I never understood, sir, up to the 24th of January, that it was considered otherwise than favorably.

Q. Which 24th of January—what year? (Subsequently corrected to December 13, 1881.) A. Last January—this year.

Q. Then you mean during this administration?—A. I always understood, up to the publication of the correspondence, that the proposition was acceptable to the State Department.

Q. From whom did you so understand?—A. From the secretaries—both of them.

Q. Both Secretaries Blaine and Evarts?—A. Yes, sir; both of them.

Q. Then you had an interview with Mr. Blaine after he went out of office?—A. No, sir.

Q. You spoke of the 24th of January.—A. I mean the date of the publication of the correspondence. Up to that time I considered that the government was considering and acting favorably upon our propositions. That was the first knowledge I had that the State Department had given a cold shoulder to the proposition of the Crédit Industriel.

Q. Did you give Secretary Blaine to understand everything that had passed before about the programme and the objects of the company during the administration of Mr. Evarts?—A. I did, sir. Mr. Belmont, I should much prefer, with your permission, that I should, at the proper time, give a succinct statement in reference to this matter, and not jump from Mr. Evarts to Mr. Blaine, and back. I should prefer to get through with one at a time.

Q. When was your last interview with Mr. Blaine?—A. I should think somewhere about the 10th of December.

Q. Did you understand then that the department was considering your plan favorably?—A. I never understood anything otherwise at any time.

Q. Did you understand that Mr. Trescot would carry out the plans of your company?—A. Yes, sir.

Q. When he was sent as commissioner to Peru?—A. Yes, sir.

Mr. BELMONT. That is all I want at present.

The committee at 3.45 o'clock adjourned, to meet to-morrow at 10 o'clock a. m., at the Fifth Avenue Hotel.

The subcommittee of the Committee of Foreign Affairs of the House of Representatives met at their room in the Fifth Avenue Hotel, New York, on Thursday morning, the 11th of May, 1882, at 10 o'clock. Present, Messrs. Kasson, Dunnell, Wilson, and Belmont.

GEORGE BLISS, being duly sworn, testifies as follows:

By the CHAIRMAN:

Question. Please give the stenographer your name and residence?—Answer. George Bliss; residence, 387 Fifth Avenue, city; my business is chiefly dealing in exchange and negotiating bonds.

Q. You are a banker; that is what I want to get at, and the firm of which you are a member?—A. My firm is Morton, Bliss & Co.

Q. Mr. Morton, our minister in France, is a member of your firm of Morton, Bliss & Co.?—A. He is.

Q. To save duplicating questions the committee is charged to inquire if any improper relations of any business demanding the intervention of the Government of the United States existed on the part of any minister of the United States abroad. In that connection it has been said that your firm had made a contract with a French company which looked to the intervention of the United States. Be good enough to state, in your own way, what the facts are connected with the contract known as the Guano contract, between your house and the French house, and what personal connection, if any, Mr. Morton had with it?—A. In May last, Mr. Robert E. Randall and Mr. Suarez, who represented themselves, one as counsel, and the other as agent of the *Crédit Industriel*, a Paris institution, called at the office and inquired for me. They came into my private office and stated their business, and that they desired to secure an agent for this institution for the sale of guano and nitrates from the West Coast of South America, or from Peru, which this company had a contract for with the Peruvian Government, and which embraced pretty much all that could be shipped of these articles to the United States. Of course, questions were asked regarding the business, and the matter was discussed, and they asked me if Morton, Bliss & Co. would assume the agency. My recollection is that I did not decide then, but told them I would think of it until the next day. I asked what commission they proposed to pay, and in the afternoon after they left I discussed it with my partners who were in New York, and the next day, when they came in, I told them I would entertain the proposition, but only on condition that we receive a full commission. "What is a full commission?" I said, "5 per cent." They demurred to that; said the company would probably not pay it. I said, "Very well, gentlemen, I do not seek the business." Many times they came in—I do not know how many, but several—at short intervals, and the same matter came up, and I said from first to last I won't entertain it, and will not take it up on any less terms than 5 per cent. commission. I do not know when, but later these two gentlemen came in together—I supposed the business was all done so far as we were concerned—they came in together, and Mr. Suarez asked, "Well, now, Mr. Bliss,"—I cannot use his language exactly—"we want you to take this business, but the company or the institution won't be ready to pay that commission." "Very well," said I, "I will not accept it on any other terms." As nearly as I can recollect Mr. Randall then said, "Well, Mr. Suarez, if we want Morton, Bliss & Co. to be the agents we have got to come to Mr. Bliss's terms, I see plainly. You had better cable to Paris and tell them that is the ultimatum." I do not know when, but I understood within a day or two that they had a reply that they had accepted the terms. Nothing further passed in regard to it. No memorandum of any sort—not a word in the way of an understanding; it was not submitted to writing.

Q. Let me ask you here two questions: Was Mr. Morton one of the persons at all consulted during this period that you speak of now?—A. I think Mr. Morton passed through New York on his way—through from—he was closing two houses or about closing—on his way from Washington to Newport, or from Newport to Washington, and I called his attention to it. I told him I had no idea it would ever amount to anything. He said, "if it does I should think it would be a good business." I do not know that he said anything beyond that.

Q. Until this time, I understand you, nothing was said or suggested in the slightest about intervention by any government—by the Government of the United States?—A. Never a word said to me before or after regarding that, so far as I remember.

Q. Now, take up that thread again, sir, if you please?—A. I heard nothing more of it—I should say nothing more—until we received—until our firm did; I was out of town. Oh, I ought to have said that during one of these discussions, in order to give these gentlemen more information than I was able to, I made an appointment with Mr. Hobson, of Hobson, Hurtado & Co.—in fact, he came down here from New Hampshire to confer with them, they having expressed a desire to see him. My recollection is that the next word that was heard in regard to it was a cable which came from Paris. The cable was dated August 9. "Your conditions accepted unless new obstacles arise."

Q. You can proceed succinctly.—A. August 11th: "Cable promptly Hobson's estimate actual cost store per year. Also friends may wish option to call for advance on delivery for incurred expenses, say £6 per ton, standard, Azote, 5 to 7." We replied as follows: "August 12th. To Morton, Paris. Storage, 15 cents, per ton per month. Will make advances suggested, if interest 6 per cent." At this time I was in the country—when all these were received—and they were repeated to me. The same day, August 12, having received, in the country, a copy of this, I replied as follows to my firm here, so that they sent another cable later, the same day: "New York, August 12. To Morton, Paris. Since cabling to-day, Bliss wires unwilling advance on guano, except freight and insurance. Will make suitable advance, nitrates, we controlling

extent shipments." August 12th we received the following cable: "All arranged, 5 per cent., without advance."

Q. That concludes telegraph dispatches?—A. There is nothing more until the contract, which was prepared in Paris, was received for execution.

Q. That is, then, as I understand you, the entire correspondence, either by letter or telegram?—A. Until the completion of the contract. It is proper to add, perhaps, that those cables came to the firm in New York without signature, which is not the usual way of cables that we receive with anybody connected with us abroad. My inference was that they were sent in the interest of some one else, or at the suggestion of some one else. That is with me only a matter of inference.

Q. The committee had testimony on the subject from Mr. Randall yesterday. Now, sir, come directly to the point. We have nothing to do with private arrangements or profits in the conduct of any business in your house; the question that is central to the case is, was it contemplated at the time of the completion of that contract by any understanding, express or implied, so far as you know, that the interference of the United States Government was to be called for in any aid whatever of this enterprise up to the time of the completion of that first contract?—A. I never received the slightest information of a desire on the part of any gentleman who took part in the negotiation that we should take any steps outside of this direct, immediate business, and it is as purely a private business contract as I ever made in my life, so far as I know.

Q. It was made between your house and the house of Geautrean & Co., I see by the language of the contract, they representing somebody else, but they signing the contract. Am I right?—A. They signed the contract, but they are connected, or represent the *Crédit Industriel*, a large institution in Paris.

Q. Now, sir, in the main contract there is no allusion whatever to the intervention of the United States Government?—A. None whatever.

Q. State now, if you please, what you know of the memorandum known as the annex, which does make allusion to the intervention of the United States?—A. I came to New York, as was my wont, every two weeks during the summer for a day or so, and when I arrived here on the 18th or 19th of September I found a contract in duplicate, each with the annex. I read it, and read it again, and still again, and even more than three times, within one day, or possibly two. I think I remained over longer than I expected to in consequence. That was the first time that I heard of any such condition, and I read it with care, and considered it, and reflected upon it, with a view to discovering what its bearing was upon the interests of Morton, Bliss & Co., and I concluded that there was no objection on the part of the firm, or on my part, against it. I executed it, returned one copy and retained the other, and have never heard any explanation other than that which I have seen in the paper to-day reported by Mr. Randall, save that a suggestion came from Sir John Rhodes from London, in a telegram to me, that he thought it a very proper condition to protect this institution from a claim for damages for nonfulfillment—that there should be a limit; and if they consigned guano for a limited time and ceased for any reason, without some such limitation of time, a claim might arise for the whole duration of their contract with the Peruvian Government. It is a mere surmise; I did not give much weight to it. I have not the slightest hint from any quarter other than those two, and it is a mere question of judgment.

Q. I will read for the information of the committee, and as the basis of the further question, the clause of the annex to which I wish to call your attention: "It is further declared and stipulated that the said contract shall continue in full force and effect for the period of the existence of the contracts entered into on the 7th day of January, 1880, and the 1st and 8th days of February, 1881, between the Peruvian Government and the *Société Générale de Crédit Industriel et Commercial*, but in case that the said contracts should fail to become operative and effective in consequence of the failure of the United States to mediate between Chili, Peru, and Bolivia, and thus to secure peace and the recognition of the concessions, rights, and privileges granted to and secured by the contracts above mentioned, then the said contracts between Messrs. Geautrean and Messrs. Morton, Bliss & Co., shall cease and terminate at the expiration of six years from the date of said contract." Do you understand that the effect of that provision is that the contract between you and they was to continue in force as long as their contract with the Peruvian Government, existed, unless the contracts with the Peruvian Government and the *Industriel Company* failed to become operative and in effect in consequence of the failure of the United States to mediate, and in that case this contract was to terminate in six years; is that your understanding?—A. My understanding when I read this annex was that it was to terminate at the end of six years, unless peace was attained between those two governments.

By Mr. DUNNELL:

Q. Through the mediation of the United States?—A. That does seem to be stated there.

By the CHAIRMAN:

Q. The meaning of it is, I confess, somewhat obscure, but, construing it as a lawyer, I should think that they intended, in case their contract did fail, and the United States did not intervene, to put the responsibility of the failure, so far as this contract was concerned, upon the United States. It is a little obscure, but I can give no other interpretation to it.—A. You will, then, gentlemen, appreciate my hesitancy when this was received, for I was unable to decide what prompted it; it was new entirely; the arrangement made with those gentlemen representing the institution contemplated an arrangement to endure as long as their contract with the Peruvian Government continued, and this came then for the first time.

Q. Looking to a possible termination in six years?—A. Yes, sir.

Q. Has your house in fact received any consignment under that contract?—A. We have not. Perhaps I had better say that we have received in connection with this business two letters from these gentlemen, Messrs. Geautreau, and one of them was a proposal to make a shipment. I have both of the letters here, and our reply.

Q. Unless it is called for I do not want to go into your private affairs, except in connection with our public inquiry. You were going on to state whether you did or did not receive any consignment?—A. We have not.

Q. Has your house, or any member of it, by reason of this contract, brought any influence to bear upon the government for intervention?—A. I do not think it would be possible for my house, or any member of it, to bring any such influence to bear. I never have, and I have not the slightest reason to suppose that any other member of the firm has, ever attempted to bring any such influence to bear.

The CHAIRMAN. Mr. Wilson, have you any question?

Mr. WILSON. I suggest that Mr. Belmont proceed.

The CHAIRMAN. Then, Mr. Belmont, will you proceed?

By Mr. BELMONT:

Q. Mr. Bliss, you have just stated that you received cables from Paris dated the 9th of August and the 11th of August, which were not signed; to whom did you make reply?—A. To Mr. Morton. I presumed they came from him, because they were in cipher—in our code.

Q. What is the capital and position of the Crédit Industriel?—A. It is considered a very strong institution; I do not know their capital.

Q. I refer principally to their position.—A. I think very good; certainly there are influential gentlemen connected with it.

The CHAIRMAN. Before you pass on—

Mr. BELMONT. I want Mr. Bliss to state whether cipher was used or ordinary language in that correspondence?

The WITNESS. Our cipher was used.

By Mr. KASSON:

Q. Then it had to be sent to Mr. Morton?—A. Yes, sir.

By Mr. BELMONT:

Q. In entering into a contract with an institution of this nature you would be willing to do it on as favorable terms as usage requires?—A. No, sir; I might not be disposed to take up the business at all.

Q. Then what did you consider the usual commission?—A. Five per cent. with the guarantee, the merchant assuming the risk.

Q. In New York?—A. I do not know in regard to guano. I think five per cent. is the usual mercantile commission.

Q. My question refers to commission for consignment of guano and nitrates from Peru, in New York; the usual commission?—A. That would depend; if guano came to New York, as it now comes, for sale by the cargo only, and generally sold in advance of arrival to leading firms to distribute it, a less commission would doubtless compensate; but after the discussion that I had with these gentlemen, in the way it was to be conducted, it would require, in the way it was to be handled, much more attention, involve much more detail, and the employment of suitable men to effect sales directly—direct sales ourselves to the consumers.

Q. Was not the commission in the original contract, before the memorandum was added, three per cent.?—A. It was not; it was five per cent. I proposed that at first, just as I have stated, and from first to last I have stated the same, that under no lower rate of compensation would I consider the business. It involved a great deal of responsibility for me personally, and I would not undertake it at any less rate.

Q. I merely ask because yesterday I understood Mr. Randall to say that in the original contract there was a proposition for three per cent.—A. Ah! In the original proposition to me and discussion there was such a proposition, but not in any contract, or in any proposed contract.

Q. May I ask if you have ever received any consignment of guano and nitrates

from Peru, and what was the commission charged?—A. We have not received any for sale by ourselves.

Q. Did you, in your individual capacity, or did your house, communicate by correspondence or verbally with Mr. Morton before he left on his mission, upon the subject of the proposed contract?—A. I think the testimony and the answers already given include everything that passed with Mr. Morton. He gave very little attention to business of any sort, and he was very much engaged. If he came into the office it was for only a very short time, and only important matters were spoken of to him, and, while this was referred to, it was very cursorily.

Q. Are you not in the habit of communicating to him important transactions of this nature?—A. Ordinarily, yes; but I never supposed that when the contract came from Paris any business would arise under this. I had so little faith in the outcome of it that it scarcely came to my mind as a possibility that any business would arise from it.

Q. The only communication with Mr. Morton, then, either by private letter or by the House, was in cipher dispatches?—A. No; while I was in the country I was in the habit of receiving every week or two a private note from Mr. Morton, and there was a reference, I should say, once or twice to this matter, but the letters were not kept; they were never filed; they were destroyed, as other unimportant private letters are destroyed.

Q. Did they refer to this matter?—A. I do not know; they were of no importance. He never referred—so I am informed by my partners, and so my own recollection convinces me—he never referred, in any letter to the firm, to this business, nor has the firm in any letter to him.

Q. I was asking then about private communications.—A. Well, as I say, there was nothing of sufficient importance for me to preserve them.

Q. Well, then, Mr. Morton always considered the commission of five per cent. a usual one for transactions of this kind?—A. I never asked him whether he did or not. I told him that I would not undertake the business for any less compensation than five per cent. I communicated that to him in the conversation, I think, when he he said should think it would be good business.

Q. Then, do you know the reason that an additional two per cent. was proposed by the Crédit Industriel?—A. Possibly my own statement of the necessity, or of the reasons why I would not undertake the business for less, may have influenced the gentlemen. I told them first the usual brokerage was one per cent. If a broker sold a cargo he would simply send us a note that he had sold a cargo to such a firm, and we paid him one per cent. I told them it would require probably a larger office than we now had, and additional clerks, and the guarantee for the risk of the sales was very considerable, and I would not undertake that for less than one per cent. They said, you are going to sell it for cash? I said that is impossible; it is sold very largely on a credit of ninety days or four months; otherwise it is sold on a credit of from ten to thirty days, and it is about as much hazard to sell merchandise on a thirty-day credit and give possession of it as it is to sell it on a credit of ninety days or four months; and all these reasons why no one ought to do it for less than five per cent. may have had some weight with these gentlemen. You will see this contract provides, if we sell it, we are responsible for all that is sold, whether it is sold for cash before delivery—which is never done—or whether it is sold on more or less credit.

Q. Were you to make any advance on the contract?—A. Not under this contract.

Q. And if not sold for cash were you to guarantee the payment?—A. Certainly. But when it is sold for cash there is a hazard that one per cent. would not more than compensate for, in my judgment.

Q. Was there any correspondence, in any shape, upon this point of the increase of two per cent., or was the point settled in Paris?—A. The point was settled here by cable. These gentlemen from the first knew the lowest—or only terms—upon which we would accept the business, and that was upon receiving a compensation of five per cent., gross, we to pay everything else; that is, so far as brokerages, &c., were concerned. As I stated, after a great many interviews they cabled to Paris that that was the ultimatum and it was to be carried out; it was not settled in Paris. I have an impression that they did hope before then that it would be done for less, but the decision was made as stated, and it has never been swerved from on my part or that of my firm.

Q. Then the extension of the time—that is, the six years—was not the reason for an additional 2 per cent.?

The CHAIRMAN. That is a limitation, Mr. Belmont, not an extension.

The WITNESS. I am not aware that it was considered at all in connection with it.

Q. I was referring to Mr. Randall's statement yesterday. Did not Mr. Morton inform you, or the house, about his interview with President Grévy, which was referred to in the published dispatches?—A. He did not.

Q. Mr. Randall is the counsel of the Crédit Industriel?—A. He so represented himself to me.

Q. And did he have written authority to sign for your house?—A. He did.

Q. Then he was also your agent in this matter, was he not?—A. He could not hardly be considered our agent; he was authorized to sign a contract in accordance with the terms fixed between those gentlemen and myself. Had it been otherwise we should not have been responsible for his approving it.

Q. Where was that written authority given him?—A. I did not give it; I suppose it was given him in New York, but I don't know.

Q. Nor by whom?—A. I do not know.

Q. Did you, or any of your partners in New York, authorize Mr. Randall to add the memorandum by which the possible mediation of the United States was contemplated?—A. Certainly not.

Q. Did not authorize him to add that memorandum?—A. Certainly not.

Q. Did you on that occasion communicate by cable or cipher in any way with your partner, Mr. Morton?—A. No other cable concerning it than those which I have read. The first knowledge, as I have before stated, that I had of it was when I saw the contracts in duplicate, with the annex with each.

Q. Well, then, Mr. Randall, who was the counsel of the other contracting party, had full power to sign a contract for you unless it was understood that he would be guided by directions from your partner in Paris?—A. There was no understanding other than shown in the copy of authority given him which I have here, and which, by the way, you had yesterday.

Q. I was asking before where that authority came from, and by whom it was given?—A. I answered you that I did not know which of my partners signed it. I was absent from the city most of the time from the middle of June until the 1st of October.

By the CHAIRMAN:

Q. The contract and the annex, I think you said, were signed at the first time?—A. The first I saw them was when I came down from the country, as I have before stated, on the 18th or 19th of September; the copy which was returned was signed by me on the 20th of September.

By Mr. DUNNELL:

Q. There is but one document, as I understand it?—A. It is a contract, the whole of it; the annex is simply a supplement.

Q. It makes up a single contract, does it not?—A. Yes, sir.

Q. They are in two parts, but they constitute one contract?—A. They are both in duplicate.

Q. The point with me was, whether there were two signings—whether the annex was separately signed?—A. Yes, sir; it was.

Q. Do you say that you have done no business for this French company under this contract—have you received no consignments?—A. None whatever. We had an offer of a consignment, but the terms were such that it would not have been possible to do business under them, and at the price.

Q. Were the terms different from those set forth in the contract?—A. No, sir; save in this respect, that they could fix prices by this contract, and they wrote us proposing to ship a cargo from Barbadoes here supposing that there was no guano in the country. The letter is here.

The CHAIRMAN. We will not cumber our files with it unless some member of the committee wants it. You may just state the substance of it.

The WITNESS. I would prefer to read it.

The CHAIRMAN. Very good, sir.

The WITNESS (reading):

“PARIS, October 14.

“Messrs. MORTON, BLISS & Co., New York:

“DEAR SIRS: In view of your wishes expressed in relation to the guano famine”—we had not expressed any such fact, there was not any famine, unless I may have said to those gentlemen, under some circumstances, it is a good time to send it because the supply now is irregular—“in view of your wishes expressed in relation to the guano famine which has prevailed of late years in the United States, and of the necessity of providing as soon as possible the markets of that country with that splendid fertilizer, we are taking active steps for the speedy re-exportation from Barbadoes to such port as you may direct of a cargo of 600 tons, more or less, of an average 5 50-100 to 6 per cent. azote, and 9 to 10 per cent. phosphoric acid. The sale price of the guano is to be accounted under contract for the Peruvian Government at the rate of \$65 per ton sold in Barbadoes, to which your commission of 5 per cent. expenses and re-exportation (which we do not yet know), &c., are to be added in order to determine the price for sale in the United States. You will please understand the prices at which this guano may be sold cannot be considered as the standard of what prices will be for future sales re-exported as it is from a market placed to the United States in order, as before stated, not to have this last country still longer unsupplied with guano. We should

like to know what facilities can be had by you as to advances being made on guano in the United States. Please also state the terms and conditions for such advances of money (say £8 or £9 stg. including freight). Allow us, gentlemen, to express the pleasure we feel at the prospects of entering very soon into business relations with your firm under the contract entered into through Mr. R. E. Randall's intervention, and the relations which we are confident will soon assume proportions when loading shall have resumed that the guano deposits.

"We have the honor, gentlemen, to remain, respectfully, yours,

"P. L. & H. GEAUTREAU, *Agents.*"

Will you have my reply?

The CHAIRMAN. You may give it if you choose.

The WITNESS. (Reading.)

"OCTOBER 31ST.

"Messrs. P. L. & H. GEAUTREAU,

"*Paris, France:*

"DEAR SIR: We have your favor of the 14th instant, and note that you are taking active steps for the re-exportation from Barbadoes of a cargo of about 600 tons of guano of $\frac{5.50}{100}$ to 6 per cent. ammonia and 9 to 10 per cent. phosphoric acid, and that it is to be accounted for under the contract with the Peruvian Government at the rate of \$65 per ton, sold in Barbadoes. This price is more than can be realized for the article in the United States. The price of this quality has been for several years \$46, but on account of the small supply, it has been sold during the past season as high as \$48. It is expected, however, that when cargoes now afloat arrive the price will recede to \$46 per ton. Guano containing $9\frac{1}{2}$ to 10 per cent. of ammonia was for a long period held by the agent of the Peruvian Government at \$65. Some sales have been made during the past season in small lots at \$67.50, but it is supposed that the price will again be \$65 on arrival of supplies now on the way. We understand that it has been the uniform custom of those who have controlled the article in this market heretofore, to make an abatement from the price (\$65) in case of a considerable purchase. The guano that has been sold during the present and the latter portion of the last year has been delivered in bags stamped with the name of the firm that has for many years controlled the entire supply. This has probably facilitated the sale, and we think the article will hereafter be sold and delivered with the same indications tending to inspire confidence. We defer reply to your question relative to advances upon shipments, as the condition of our market renders it impossible to make sales at prices that would meet your views.

"We remain, dear sirs, respectfully yours,

"MORTON, BLISS & CO."

Q. The guano referred to in those communications has not arrived?—A. No, sir. They say in their letter that they will ship it to such port as we will direct. We did not direct any. Then came a letter of the 30th of November:

"Messrs. MORTON, BLISS & Co.:

"DEAR SIR: After some delay in transmission, your favor of the 31st ultimo has duly come to hand. We have noted its contents, and beg now to correct a misunderstanding which has occurred in relation to the quality of the cargo of guano we proposed, if suitable to you, to reship to the United States. The quality of this guano we stated to be on an average 5.50 to 6 per cent. (azote) or nitrogen, which is much more valuable than the same quantity of ammonia. We thank you for the information kindly furnished concerning the guano trade in the United States, and will see, with our sub-agent, whether we cannot arrive to make a re-exportation at the price corresponding to those of your market. Meanwhile we trust, for the reasons stated in our last letter, the sale price fixed first by us may not appear to you as a drawback in our future intercourse.

"We remain, dear sirs, respectfully yours,

"P. L. & H. GEAUTREAU,
"*Agents.*"

Q. Why have you received no consignment since the making of the contract?—A. I suppose that these people have not shipped under the contract with the Peruvian Government any guano. I suppose the only guano that has come from the west coast—I suppose most of the guano has come under a purchase made by Antony Gibbs & Co., of Liverpool, from General Lynch.

Q. Owing to the disturbed condition of the country there?—A. Yes, sir.

By Mr. BELMONT:

Q. You mean under the authority of the Peruvian Government?—A. Yes.

Q. The Peruvian Government is not now in a condition to carry out any contracts?—A. No, it is not. This country is plentifully supplied with guano, which I suppose is sent here by order of Antony Gibbs & Co.

By Mr. DUNNELL:

Q. Has your firm at any time, either before or since the making of this guano contract, sought to secure from the Government of the United States mediation between Chili and Peru?—A. Not to my knowledge.

Q. When was Mr. Morton appointed minister?—A. I cannot fix the date, but I should say it was about the 17th or 18th, or the 20th perhaps, of March.

Q. I thought it was later.—A. I may be wrong, but that is my impression. He was nominated promptly, and he was confirmed pretty promptly after being nominated.

Q. When were the first negotiations had between you and Mr. Randall after this contract?—A. As nearly as I can fix, in May.

Q. Have ever you personally talked with the President, or with the Secretary of State, on the subject of mediation by the United States?—A. No, sir.

Q. Mr. Suarez and his colleague Count de Montferrand urged or spoke of the importance of mediation on the part of the United States at the time this contract was entered into?—A. I have no recollection that any reference was made to it, unless in response to some expression of doubt whether any business would ever be done if any contract was made. I did not look upon it as very hopeful; the situation was not promising for business, and I am not sure that there were not some replies intimating that they expected things would all be settled.

By Mr. BELMONT:

Q. That the Peruvian Government would resume its function?—A. Yes; that the difficulties would be in some way overcome. It was merely incidental, and I have no definite recollection concerning it.

By Mr. DUNNELL:

Q. Did the question of the mediation of the United States, or the probable mediation, have any influence with you in the making of this contract?—A. Not the slightest. I have here—perhaps they may interest you, if you will excuse me for referring to it. In 1880 proposals were made to our London firm to be agents for this same institution, the Crédit Industriel, for the whole of Europe, for the sale of these same articles, and the negotiations were continued for a considerable time. I have one long dispatch and some letters here which have been sent to me by Sir John Rose. They have no direct bearing upon this, but I saw in Mr. Randall's testimony that the Crédit Industriel, or the Messrs. Geautreau, named us as a firm to whom he should apply here. I suppose that was prompted by those negotiations with Morton, Rose & Co., though it may have been prompted by the knowledge on their part that we had furnished credits in the conduct of this business by a former agent for a large sum, and had made large advances of money for their accommodation.

Q. When you made the contract with the Messrs. Geautreau I suppose you were aware of the correspondence which had been had by Mr. Suarez and his colleague, the Count de Montferrand, with the Secretaries of State, Messrs. Evarts and Blaine; were you cognizant of the character of that correspondence?—A. I think not; I do not think it came out as soon as that. I was not, unless it came out in the newspapers before that.

Q. The correspondence was had by Suarez and Secretary Evarts, which was of course prior to that time.—A. I only knew it through the newspapers, and whenever it came out I doubtless knew it.

Q. You say that correspondence was not brought to your attention at the time the contract was made?—A. No, sir.

Q. Is there any other American banking house acting as the agents of the Crédit Industriel?—A. I am not aware that there is; certainly none connected with this business, because we were to be the sole agents of this country.

Q. Do you know whether any other American banking house, in any other branch of business, is acting as the agent for this corporation?—A. I don't know.

Q. Or ever has, to your knowledge?—A. I don't know.

Q. Is your firm the first American banking firm that has been recognized by the Crédit Industriel?—A. I am unable to say; I do not know whether they had correspondence before with this country or not; my impression is that they had not.

Q. Do you understand that Mr. Randall is still the agent or the attorney for that company?—A. I suppose him to be—not the attorney, he is counsel.

By Mr. WILSON:

Q. Have you read the resolution under which this, the Committee of Foreign Affairs, is making this investigation?—A. I have.

Q. I desire to ask you a question with reference to a subject that has not been touched upon. We are confined to that jurisdiction. One of the preambles relates to certain business papers in the State Department. Have you any knowledge of them?—A. No, sir.

Q. In addition to the various questions propounded to you this morning, have you any knowledge or any cause to believe that Mr. Morton has had any improper connection with this or any other company?—A. I have not.

Q. There is a supplementary resolution directing this committee to call, to demand, from Jacob R. Shipherd, of New York, copies of all correspondence between himself or any person or persons whatsoever, and all papers and other evidence in his possession tending to show what Shipherd did, or intended to do, to enforce a claim against the Peruvian Government. Have you any cause to believe or suspect that any correspondence has been carried on between Mr. Morton and Jacob R. Shipherd?—A. I never heard of Mr. Shipherd save from the newspapers in connection with this business. I never saw him to my knowledge. I never heard Mr. Morton speak of him, and I do not believe Mr. Morton knew him.

Q. Have you any reason to believe that this tender, this contract, was made to your firm because your partner was minister to France?—A. I never supposed it for a moment, and I do not believe it now.

Q. There was some caviling between you and the gentlemen who represented the Crédit Industriel as to the per cent. Let me ask you whether you were induced to demand that 5 per cent. because of Mr. Morton's official position at Paris?—A. No, sir.

Q. Were you controlled in any regard in this matter because of the position which Mr. Morton occupied?—A. I was not.

Q. I understand you to say that you gave Mr. Randall no specific authority to sign the annex, or the condition in the annex referred to there?—A. We did not. The only authority he had was to sign a contract upon the terms and conditions agreed upon. There was never anything of that sort spoken of; but as I said before, I saw no objection to it; I did not see that it would affect us unfavorably, or that it was of any importance.

By Mr. BELMONT:

Q. You have already stated that you had no information from Mr. Morton about his interview with the President of the French Republic?—A. None from him.

Q. Or from anybody else—Mr. Randall or any one?—A. No, sir.

The committee then adjourned to meet at the New York Hotel at 2 o'clock to resume the examination of Mr. Randall, should he be able to go on.

GEORGE BLISS.

Pursuant to adjournment the Subcommittee on Foreign Affairs of the House of Representatives met at the New York Hotel at 2.15 o'clock, on the afternoon of Thursday, May 11, 1882.

Present, Mr. Kasson, Mr. Dunnell, Mr. Wilson, and Mr. Belmont.

The examination of Mr. Robert E. Randall was resumed.

The proceedings were opened by a statement by Mr. Randall, as follows:

There are one or two statements which I wish to correct in my examination of yesterday as it was published in the morning newspapers. It is stated that I asked Mr. Morton to use his official influence to have Doctor Rosas recognized as the representative of the Peruvian Government in Paris. The word that I intended to use was "officious," or influence in his private capacity.

I state, and this was my error, that the first knowledge I had of Mr. Blaine having changed his views in relation to the Crédit Industriel programme, was from reading his instructions to foreign representatives after they were sent to Congress, about the 24th of December; I should have said the 13th of December.

Mr. Dunnell asked me yesterday as to the date of the organization of the Crédit Industriel, and I did not know positively. I have since cabled and received a reply from Paris as to the date. They cabled me in cipher that the Crédit Industriel was founded in 1859, with a capital of 60,000,000 francs. It has to-day a reserve surplus of 7,000,000 francs; that the company had, as represented, £15,000,000 sterling or \$75,000,000 of the Peruvian loans of '72. The total of these loans was 35,000,000. I think, that the capital of the Compagnie du Pacifique is 13,000,000 francs.

Mr. KASSON. Before we proceed with the examination, I would like to ask whether you propose to make any explanation of your dispatch, under date of October 25, which reads as follows:

"Mediation accepted—Banque should send authority, official, to offer Guillaume's programme."

(Signed.)

"RANDALL."

which I find is contained in the printed document.

WITNESS. I should be glad to explain that. From the drift the questions are taking I think it would be best to give the committee a statement how I happened to be connected with the affair. In the latter part of September, 1880, at the instance of Mr.

Francisco de P. Suarez, I met Mr. A. Guillaume in Paris in reference to the Peruvian affairs. At that interview Mr. Guillaume stated that he was the chairman of the Continental Peruvian Bondholders Committee, and that he represented the bondholders of France, Belgium, and Holland, and that they also had a nucleus of the English bondholders in accord with them; that they had been instrumental in bringing about the contract which the *Crédit Industriel* had entered into with Peru on January 7, 1880, which was made by Peru with that company in the interest, for the protection, and with the view to the ultimate payment to the bondholders of their bonds. The object of entering into the contract arrangement with the bondholders was due to the fact that all previous arrangements that had been made had failed in this respect. The bondholders had received nothing under the contract with the Peruvian Guano Company of London, and finally this company had declined to pay anything, even to Peru, as a royalty. The contract with the *Crédit Industriel*, as I said, was in the interests of the bondholders. The *Crédit Industriel* undertook to pay the Peruvian loan of 1870 and 1872, with the interest as it accrued, Peru being anxious to restore her credit, and the contract was to be extinguished when these debts were paid; when the last bond issued by Peru was paid the contract was ended, so that the whole object that Peru had and the *Crédit Industriel* had in entering into this contract was with the view of paying her bonded indebtedness and no other.

I will take this occasion to hand you my only copy of the contracts between Peru and the *Crédit Industriel* on 7th January, 1880, and 8th February, 1881, asking that they shall be returned to me; and I ask that they be made a part of my testimony; these are the actual contracts. It is right that the committee should understand the exact position of Peru and the *Crédit Industriel* with reference to this affair. Under their contract Peru was to receive £2 per ton royalty, and £2 per ton further was to be expended in the purchase of bonds, not exactly a sinking fund, but to redeem the bonds of Peru—amortization of the bonds at the rate of £2 per ton for every ton of guano sold; then, of the balance, 80 per cent. was to go to the bondholders direct in payment of their debt, to extent which the amount would permit. The remaining 20 per cent. was retained by the *Crédit Industriel* as compensation for its services for the trouble and expense attending the shipments of guano, the freight, the insurance, commission for sale, &c.; this 20 per cent. of the net amount received was all they were to receive. To carry out these results the *Crédit Industriel* agreed to organize a company solely for such purpose within its own self. That company was organized, and is what we know as the *Compagnie Financière et Commerciale du Pacifique*. The Peruvian bondholder's committee, and the bondholders themselves, were and are to have access to the books, papers, and everything connected with the new company, the *Compagnie du Pacifique*, and all the proceedings of that company were to be and are subject to the inspection of the bondholders quarterly, and the Peruvian Government were and are to have the right of appointing inspectors also for that purpose, and on the failure on the part of the company to carry out the object of the contract, viz, the payment of the bonds of Peru, the contract of itself was to become void. This contract was entered into in consequence of a law passed on the 10th of October, 1879, by the national congress of Peru, which authorized the then President, General Prado, to appoint commissioners to proceed to Europe with a view to make some settlement of its debt. The result was this contract.

He appointed the minister at Paris, Don Juan M. de Goyeneche and Doctor Don Francisco Rosas, who, at that time, was the president of the senate of Peru. They proceeded from Lima, and he entered into this contract. In the mean time Prado left Peru; the war had broken out and Pierola declared himself dictator. He, for some reason, disapproved of the contract of January, 1880, but subsequently he authorized the said commissioners to execute such a contract, and it was re-executed in February, 1881. Therefore the contract was made in accordance with an act of Congress of Peru passed in 1879 by the direction of the constitutional President, Prado, and by the dictator, Pierola. Mr. Guillaume, at that interview, further explained to me that it was necessary, and had been asked for by Peru, that a further loan to Peru of from £4,000,000 to £6,000,000 sterling should be made, with the view in bringing about peace between Chili and Peru to pay the war indemnity asked by Chili at that time.

By Mr. DUNNELL:

Q. When was that?—A. This interview was in September, 1880.

Q. When that additional loan was asked?—A. It was asked prior to that time. I will look and see if I can give you the date. It was published, and I read it in the *Daily News* of London about that time. Peru said to the bondholders and to the *Crédit Industriel* that she could not meet her bonded obligations if Chili was permitted to take Tarapaca and the Guano Islands, and it was necessary to release them to give her the opportunity to carry out the contract that the war indemnity should be paid. Mr. Guillaume stated that they had communicated to the representatives of Peru that they were perfectly willing to make this further advance, but that the different administrations of Peru had so constantly abrogated, and declared void the

actions of previous administrations that they wanted some further guaranty than the simple assurance on the part of the dictator. The question with them was whether he was there by law and whether any contract made by him would be binding upon subsequent governments, and therefore they required some other guaranty than that suggested. Mr. Guillaume further stated that they had been advised by the governments of France, Belgium, Great Britain, and Italy that they were perfectly willing to take any steps necessary to see that their citizens and subjects were paid, but that the United States had intimated that they did not desire any interference on the part of European governments on the American continent, and hence they declined doing it.

By Mr. BELMONT:

Q. Was this intimation during Mr. Evarts's time?—A. Yes, sir; it was in September, 1880. I am now stating the substance of the interview I had with Mr. Guillaume. He went on to say that the only feasible plan, in view of these circumstances, was that the United States should be asked to again renew her mediation between Chili and Peru and agree to act as an international trustee or to accept a protectorate over the territory of Tarapaca and the Guano Islands, so that any future administrations of Peru could not violate that obligation except in defiance of her treaty obligations with Chili and with the United States.

I desire to state here that Mr. Guillaume at that time informed me, and I have since ascertained it to be true, that there are in New York City to-day creditors of Peru holding the bonds of Peru to the amount of \$3,600,000. I have a copy of the bond itself which I will file as a part of my evidence. This is in English the translation from the Spanish. Mr. Guillaume further stated that they had information very direct that the course which they proposed would be acceptable to England, France, Italy, and Holland; who were at that time acting, so far as Mr. Guillaume had been advised (and I believed he had been advised authoritatively), in concert. I stated to him at that time that I thought if he could prepare any programme or plan based on his views as stated, that the United States would consider the matter favorably. I stated to him that this conclusion was due to the following reasons: First, that the United States had heretofore offered her mediation at the breaking out of the war; secondly, that there were American bondholders of Peru; and, thirdly, that the American press and people had shown a very decided and almost unanimous hostile feeling towards the project of De Lesseps, or any interference whatever in the isthmus. That the Monroe doctrine was a recognized principle of all parties and complexions of parties in the United States, and I said that if he could prepare such a programme I would with great pleasure submit it to the United States Government. He agreed to prepare a programme, and on the following day he gave me the programme, which I subsequently handed, on my return to Washington, to Mr. Evarts.

Q. Is that a part of the printed evidence?—A. I think so; it is on the files of the State Department. I would state here, as you no doubt have observed, that the validity of the contracts of the *Crédit Industriel* with Peru are in no way dependent on the mediation of the United States. They are entirely independent of the United States. We first went to our own governments in France, England, Holland, and Belgium, and their only reason for not interfering was that they were waiting for the United States Government to mediate, as they understood that the United States had claimed that right, and consequently they would not move in the premises until they saw the contrary, but that they might hereafter be compelled to protect their own citizens and subjects. And I further ascertained for myself personally that two of these governments had communicated with the United States on this subject of aiding mediation.

Q. Which two governments?—A. France and Great Britain.

Q. And their proposition had been rejected?—A. Yes, sir; as to any co-operation in the matter.

Q. And all this was during Mr. Evarts's time?—A. Yes, sir; so far as Great Britain was concerned. I am speaking of my own personal knowledge; as to others, I do not know whether I ascertained the facts at that time or subsequently. As I said before, I agreed to act as counsel and come to this country early in October. Immediately on my return I called on the Secretary of State, Mr. Evarts, and submitted to him a programme offering to advance money to Peru to pay her war indemnity, and stated to him that which I have just now stated to the committee as the views and wishes of the *Crédit Industriel* and the bondholders of Peru. Mr. Evarts stated to me in reply that he had felt great anxiety in the matter, and his efforts had been urgent to bring about peace in South America; that no administration had ever striven with stronger zeal with foreign governments than the United States had done to prevent and stop this war, and that they had always said to the belligerents that whenever the good offices of the United States could be used for that purpose they, the United States, would be ready to mediate. He then said that the United States had

instructed its ministers in Peru and Chili to bring about a conference with a view to securing peace, and that probably at that very time such a conference was in session.

Mr. BELMONT. Was that the conference at Arica?

The WITNESS. Yes, sir. Mr. Evarts told me that he was aware at that time that the proposition he had made had been accepted by all the powers except Chili, and he thought it would be accepted by her, and if so that the conference would take place immediately. He further stated to me that he regretted exceedingly that the *Crédit Industriel* had been so slow, and that the matter had not been brought sooner to his attention as to the ability of Peru to pay her war debt through any source; that while the the United States could not, under any circumstances, have anything to do with the financial negotiations between Peru and Chili, certainly could not at the instance of a foreign corporation, but still it was a very important fact for the United States as well as Peru to know that she, Peru, had the ability to raise her indemnity. It was also very important that the United States representative should understand that fact, and know what Peru could do, for information if not for action. He thanked me, and went on to ask me whether I was authorized to obligate the *Crédit Industriel* for the four or six millions sterling. I told him I had no such authority. He then said "I think you ought to communicate with your clients, and they should send immediately somebody who can represent them in the financial transaction," and he repeated, "that at this very moment it might be most important that Peru should know that she had the ability of paying her war indemnity." In consequence of this I sent the dispatch to which allusion has been made. Before sending it I called on Mr. Evarts and asked him whether that covered the entire ground; he replied with suavity, "You know your relations with your clients, I do not. The United States cannot have anything to do with foreign corporations directly, and can have nothing to do with a financial arrangement of any sort between Chili and Peru. I simply give you my individual opinion as to sending that cable. I can only say further in reference to it, that it appears to me properly worded. The first portion is properly expressed; if you change the language it might intimate what was going on, that the United States was mediating; and if you so sent it, it might go to the world before we should know the results, or whether we had succeeded in our negotiations."

Q. In pursuance of and as a result of that interview with Mr. Evarts, you sent, under date of October 25, 1880, this telegram:

"Mediation accepted. Banque should send authority officially. Favor Guillaume's programme.

"RANDALL."

And received in reply this telegram:

"Bank writes to declare officially that it is ready to carry out, so far as it is concerned, the programme sent to you. Letter follows.

"GUILLUAME SUAREZ."

A. Yes, sir.

By Mr. KASSON:

Q. I understand you rightly to say that these are the dispatches that you sent and received. I simply wanted to know in order to identify them.—A. Yes, sir; this was the dispatch I sent and the answer I received. The words "mediation accepted" would be understood, of course, in consequence of the understanding with me on the other side. I meant to imply that the United States was prepared to mediate. I could not, under the instructions, say more. I considered that I was under obligations of secrecy, as the information I had obtained of the interview with Mr. Evarts was confidential, and I did not mean to say that that mediation was actually going on, but I meant to imply that she would mediate at the earliest possible moment. At that interview, I think, or certainly at one of the subsequent interviews, Mr. Evarts stated that in his opinion there was no objection whatever to the United States accepting a protectorate over the territory of Tarapaca, "but that it must not come from the United States nor at the instance of a foreign corporation, but the belligerents themselves; if they should ask the United States to accept that position, he saw no possible reason why they should not accept it; and that he would so recommend to the President, and had no doubt the President would approve and communicate it to the Senate." I saw him on several occasions afterwards, and on all occasions he confirmed his earnest desire to bring about peace. After we had received the information of the failure of the Arica conference I urged on him that he should make fresh attempts at mediation, but he declined to take any further steps officially until he received a report of the causes of that failure. I saw him immediately after the fall of Lima, January 17, 1881, and in conjunction with the agents of the *Crédit Industriel*, Count Montferrand and Mr. Suarez, who had arrived in the mean time in this country, I urged upon him, in the cause of humanity and everything that could appeal to one's generous feelings, that he should step forward and say that the United States was willing again to mediate. He said that they could not do more than had been done, but so far as he could go he would, and that he would again communicate with the United States ministers and see what

was possible to be done. I urged it very strongly upon him, for the papers daily were giving us accounts of murders, thefts, destruction of private property, and of works of art, and various crimes in Lima. He thought that the Peruvian agents were very much to blame that they had not advised Peru, prior to the Arica conference, that she could pay a war indemnity, and no blame certainly could be attached to him for now remaining quiet. Finally, he said to me that as the hostilities appeared to be somewhat suspended (and this brings us down to February), and as he was going out of office in a month, he thought he would leave the whole subject to the next administration. This did not satisfy me, and I again renewed my requests that as his administration had inaugurated this effort it should continue, and if it could be consummated favorably I thought it should not be abandoned by him even at the last moment of his administration, as the world would give him the credit of the result of the mediation. He seemed to be gratified at what I said, and replied he would consider. I desire to call the committee's attention to one or two letters to be found in the official correspondence sent to Congress January 26, 1882. You will find in Mr. Evarts's communication to Mr. Adams, of December 14, on page 57, in the concluding lines, the following: "The Government of the United States still stands ready to render its assistance to that end in every proper way." Again, on page 428, Mr. Evarts writes to Mr. Christiancy, "This government cannot cease to entertain the most serious regrets that its efforts in the direction of securing peace between the belligerents have met with so little apparent success so far, but it still stands ready to render its assistance to that end, in every proper way." Again, on pages 147-8, Mr. Evarts writes to Mr. Osborne, "It is the sincere desire of the President to see an honorable and lasting peace secured among the South American republics now engaged in war, and he will shrink from no effort and responsibility which can properly tend to the accomplishment of such a desirable result." I assume that the word "responsibility" was used in consequence of the fact that the United States had been communicated with by us on the subject of the protectorate of Tarapaca, and I believe that Mr. Evarts referred to the fact we were willing to advance the war indemnity if United States would accept the protectorate, and that he believed the United States would do so. Then, on page 151, in his letter, Mr. Evarts says to Mr. Osborne, dated February 10, "I have to day instructed Mr. Christiancy to press upon the Government of Peru and upon such Chilean authorities as he may have access to, the earnest desire of this government to bring about a peace without delay and on reasonable and honorable terms, compatible with the true welfare of all the belligerents, so as to be lasting. I have directed him to urge the desire of this government with all the pressure that under the circumstances may appear to him to be admissible and proper to the gravity of the occasion."

Mr. BELMONT. Would it not be well in that connection to read the recommendation of Mr. Evarts, of February 17, in his letter to Mr. Christiancy?

Mr. KASSON. Well, we are not on that subject now.

Mr. BELMONT. Well, I would rather have that come in now. Here it is, page 449.

The WITNESS. Shall I read? As it refers to the whole subject of our programme, perhaps it had better be read.

Mr. Kasson directed the following entry to be made:

Mr. Belmont calls attention to the dispatch of Mr. Evarts to Mr. Christiancy, under date of February 17, 1881, page of documents 449, and desires that the page be inserted in this connection.

Mr. BELMONT. Any part of it that you may choose to read.

The WITNESS. Thanks! In this connection I will call attention to Mr. Evarts's instructions, "that the 'programme,' as it is called by these gentlemen, it would seem, might form an element in the calculations of the belligerents as to the resources at their recourse in settling the terms of peace." And he goes on to state that he incloses two copies of the programme for their information and for their consideration.

Mr. KASSON. We have all that in the documents accessible to us.

The WITNESS. Yes, sir; and he goes on to state, "it is to be observed that any part or responsibility that this government might be asked by the belligerents, or by any financial administration that might be admitted by them into the adjustment, considered or adopted, to take, is reserved by this government to be treated with entire freedom, whenever the matter should arise for consideration."

Mr. BELMONT. You have no objection to reading that part?

Mr. KASSON. Well, I object to any other portions of this being read now. You had better not take up the time of the committee now with the cross-examination. It is only encumbering the records, and I do not see the necessity of it.

Mr. BELMONT. Well, then, I desire to ask as to the plan of conducting this examination.

Mr. KASSON. Well, this is a mere reproduction of documentary evidence already accessible.

WITNESS. Now, Mr. Chairman, I desire to call the attention of this committee to the fact that up to this time, March, 1882, the Government of the United States knew of no other company or organization or individual who were desirous of aiding the United

States in the accomplishment of that which the United States had undertaken, and in which the United States had on two distinct occasions refused to allow Great Britain to participate, namely, to secure peace in South America. And that under these contracts that I have filed, it was not, upon our part, a financial scheme or enterprise. We had, in 1870 and 1872, loaned to this Peruvian Government £45,000,000 sterling. We had sought our own governments first, and they had said to us, "You must go to the United States, because we have already been informed by that government that it declines to allow us to take any part in the affairs of South America, under the political doctrines of that government." Under those circumstances the Crédit Industriel came here to ask no favor whatever, but we came to this government and said to Mr. Evarts and to Mr. Blaine, and to-day repeat to the United States, "If you can bring about peace so as to save the territorial integrity of Peru, we are prepared to pay the required war indemnity, on one condition, namely, that the United States shall accept a protectorate at the request of the belligerents, and thus secure us against loss, and she, Peru, can hereafter pay us that which we loaned to her in 1870 and 1872, and that which we are now prepared to loan to her in 1882. In return the United States secures many advantages. That is the whole position of the Crédit Industriel. We ask no favors. We are only here to facilitate. We have no claim against Peru. We represent an actual, recognized bonded indebtedness for which these very articles of guano and nitrates are pledged under bond and seal and in compliance with an act of Congress of Peru passed in 1879."

Mr. KASSON. Do you wish to continue?

The WITNESS. If you wish me, I will go on.

Mr. KASSON. Any statement you wish to make touching the efforts or action made by General Garfield's administration, we are ready to listen to.

The WITNESS. I saw Mr. Blaine immediately on his going into office. I saw him after his confirmation by the Senate. He stated that he had received my papers in reference to the affair, and had perused them with great satisfaction. I was very much gratified to find that he evidently had not only looked into the proposition which we were willing to make to Peru under the auspices of the United States Government, but I found also that he was thoroughly acquainted with the troubles between Chili and Peru and Bolivia, and understood the subject thoroughly.

Mr. BELMONT. Did he express any opinion about the Crédit Industriel?

The WITNESS. That is so general that I would simply answer that in the negative. He expressed his gratification, and I narrated to Mr. Blaine everything connected with it, and I communicated to him Mr. Evarts's views, as I understood them, about the matter, and what I had reason to believe Mr. Evarts had done; and we then proceeded to discuss the subject. He was satisfied at that interview that Mr. Evarts had, as the correspondence subsequently shows, really called the attention of the representatives of the United States in Chili and Peru to our offers, and had in some manner or other indicated his disposition to use our offices with a view to securing peace.

Q. Did you have any conversation with reference to instructions that Mr. Blaine was to send?—A. Not at this first interview.

Mr. KASSON. Just give him a chance to finish his statement. This breaks the thread of the story.

Mr. BELMONT. He is going to complete his statement of what occurred between Mr. Evarts and Mr. Blaine. He is going on with his own statement on that point.

The WITNESS. Mr. Blaine subsequently stated to me that the propositions I made were entirely satisfactory, in his own opinion; that he considered them feasible in every way, and, as I understood him, that the United States would carry them out, so far as it was proper in their negotiations in South America; that is, they would utilize the programme.

Mr. BELMONT. This was before your departure for Europe?

The WITNESS. Yes, sir.

Mr. KASSON. It is important that we should keep up this statement in reference to these interviews.

Mr. BELMONT. This is explanatory—

Mr. KASSON. No, sir; it is anticipating his statement.

By Mr. BELMONT

Q. I want to know if you saw the instructions of June 15 at any time?—A. I never did. At that, or at a subsequent interview, we discussed who should be sent as minister to Peru; he asked me if I had any opinion on that subject as to who should be a proper person. This was after we had discussed the programme. I remember suggesting to him Mr. William E. Chandler. I don't know whether it was at that interview or subsequently that he said "Would it be satisfactory to your friends if we sent General Hurlbut?" I said, "Yes, it will be perfectly satisfactory," for I knew that if General Hurlbut took a position in favor of intervention on the part of the United States he could not be forced to back down by any living man or government; that he had not only the moral courage, but he had the physical courage to require

Chili to accept that which was fair and proper. I afterwards understood, or saw by the papers, that General Hurlbut was nominated for the position. He informed me, after the appointment of General Hurlbut, that the instructions which he had given to General Hurlbut were in accord with my views and my plans, and would be satisfactory to my clients.

Q. These are the instructions of June 15?—A. Of June 15, to General Hurlbut. I then stated to him that I thought I would go to Europe, and he approved of it. My object, I think, I expressed was to personally explain to my clients the status of the then administration as to their programme, and while there I concluded the contract of Morton, Bliss & Co.; but that would have been done anyhow.

By Mr. BELMONT:

Q. Were you accompanied by anybody?—A. Yes, sir; the Peruvian minister, at my request.

Q. Representing the Calderon government.—A. Yes, sir; I requested him to go. He objected because he could not leave Washington. I pointed out to him that nothing could be done in Washington during the summer months. It was then understood that General Garfield would be removed to some other point than Washington—to Fortress Monroe, to Long Branch, or to some other watering place, and I thought Mr. Elmore had better go, as I understood from him that he had seen Mr. Blaine and explained that he was going to Europe.

Q. Was he also aware of the instructions of June 15?—A. Yes, sir.

Q. And understood them?—A. Yes, sir.

Q. And this Mr. Rosas, who was sent to Paris from Peru, was recognized by President Grévy?—A. No, sir; he has never been recognized.

Q. Didn't you state yesterday that he had been recognized?—A. I stated that Mr. Morton spoke to Mr. Grévy relative to his recognition.

Q. Did the French Government recognize him?—A. No, sir.

Mr. KASSON. Well, I would suggest that he be allowed to finish his statement. You can cross-examine him later on.

Mr. BELMONT. My purpose was only to have some information up to the instruction of June 15; you can go back of that, though.

The WITNESS. I went to Europe the 9th of July with a view of informing, as I stated, my clients personally of all that had transpired in the United States, for the purpose of communicating that which I felt a hesitancy in putting in writing—that which I may say I knew to be the instructions to General Hurlbut, though I had never seen them. Mr. Blaine had communicated to me the substance, and I knew what they were. I asked the Peruvian minister to accompany me with a view of stating also to my clients that he had the same information, officially, as minister of Peru from Mr. Blaine, and that we two should urge the importance, the absolute necessity of the bondholders and the Crédit Industriel and Compagnie du Pacifique, of sending immediately to Peru somebody who could satisfy Chili as to the payment of the war indemnity. I went abroad and remained there until early in November. I did not go to Washington on my first return, as I had nothing to communicate, and presumed everything was satisfactory; my own business and health kept me here in New York and Philadelphia with my family, and I did not go to Washington in the first instance, and not until I received a letter from Mr. Elmore, the Peruvian minister, saying he had seen Mr. Blaine on two occasions, and that he had inquired why I had not come to see him. I then went to Washington on the 22d or 23d of November. I was there the 23d or 24th. I think I saw him the first day, though I may have not, it may have been the second day. I then communicated to him all that had transpired abroad in reference to this matter. Except probably I did not speak relative to the Morton, Bliss & Co.'s contract. We had some conversation generally. I visited Washington—I have the dates—on the 26th to the 28th November; on the 30th of November and 1st of December, and on the 9th to the 11th of December, and on all these visits had the pleasure of seeing the Secretary of State.

Mr. BELMONT. Had you the impression that this programme was looked upon with favor at all those interviews?

The WITNESS. Yes, sir.

Q. I would like to ask you whether in conversation with the Peruvian minister you learned whether Mr. Blaine communicated to him anything about the Cochet or Landreau claim, or whether you yourself were informed in regard to them?—A. The Peruvian minister has informed me that on no occasion did Mr. Blaine ever speak to him about the Landreau and Cochet claims, nor did he know that any communication had passed between the State Department and the minister in Peru, on that subject.

Q. Then his impression was that the instruction of June 15 indicates the policy of the department?—A. Yes, sir.

Q. And nothing has occurred to obstruct it?—A. Mr. Elmore has said to me he knew of no change or of no disposition to change, from Mr. Blaine, on his part, the instructions of the 15th of June, up to the publication on the 13th of December.

Q. Did you know of anything?—A. No, sir; on the contrary, I did not.

Q. You were firmly convinced then that the plan of the *Crédit Industriel* was in accordance with the plans of the State Department?—A. I was.

Q. Up to what time?—A. Up to the 13th of December. That was my first knowledge that there had been a disposition on the part of the Secretary to investigate the Cochet or Landreau claims. I would state that on the 27th of November I saw Mr. Blaine, and at that interview he stated to me, or on my visit at the time between the 30th of November and the 2d of December, that he had submitted all the papers of the entire affair in reference to securing peace to President Arthur, and had had a full conference with him, and the President approved of what had been done, but that owing to the fact that General Hurlbut had got into a controversy in consequence of the Lynch manifesto which had been published some months before, he thought that it would be impossible for General Hurlbut to carry out the policy, and for that purpose the President had agreed with him that it would be proper to send a special commissioner with power to bring about a peace between Peru and Chili; and he said that while that commissioner had not been decided upon, he was himself engaged on the instructions; that is, he, Blaine, was on the instructions. The next day, I think, he told me that the commissioner would be Trescot, and I subsequently learned that Walker Blaine was going with him as secretary, and this I was informed was done at the urgent solicitation of Mr. Trescot; that Mr. Walker Blaine was not going at the instance of his father, but he was going at the instance of Mr. Trescot. I even drew the inference, from what was said, that the Secretary rather objected to it; that he was lukewarm about Walker Blaine going, but it had been agreed upon by Trescot and the President, and the information came from President Arthur to him, Mr. Blaine, and not from Mr. Blaine to President Arthur. At that interview he again intimated, or treated as settled, what Mr. Trescot's instructions would be in carrying out the *Crédit Industriel* programme, with the exception that the *Crédit Industriel* was not spoken of in them; if I had read them at the time I certainly should have indorsed them, for the instructions of Mr. Blaine to Mr. Trescot I do not think could have been stronger, or that I myself could have drawn them stronger. If you recollect, it was stated that the United States wished to avoid bloodshed and misery; that the United States desired to treat with consideration all the powers, and to treat the subject with the consideration to which it was entitled; and the manifestations which had been shown by Chili did not receive the approval of the United States relative to the arrest of Calderon, and they thought that he should be restored, and that Peru should be permitted to organize a permanent government in Lima; that the United States disapproved entirely of calling a conference as to the treaty, based upon the idea that there should be annexation of territory to Chili; that the latter should be left open for discussion in conference, and the whole paper is very decided as to instructions relative to matter pertaining to the arrest of Calderon.

Mr. KASSON. Well, we have all this in print.

The WITNESS. The only thing I will repeat in connection with these instructions is that they did not mention anything of the *Crédit Industriel* proposition. We never have asked the United States Government to do so, only that we should be utilized. Our programmes would necessarily be a matter between us, the *Crédit Industriel*, and Peru.

By Mr. BELMONT:

Q. How about the dispatch of August 4, in relation to the Landreau claim? Was that in conflict with your interests?—A. I should think, judging from the prospectus of the Shipherd Peruvian Company, that it was decidedly in conflict. I saw no substantial provision there for the payment of the Peruvian debt, or anything in the interest of Peru or her creditors; and if the matter had been brought before our agents or myself, we would have denounced it. If we had been approached, we should have declined any intercourse with Mr. Shipherd, or connection with his company. It was a mere scheme, nothing substantial in it. Mr. Shipherd's programme was a mere financial scheme. On the other hand we were and are recognized creditors to the amount of £45,000,000 sterling, and wish to secure our money legitimately. We want Peru to be able to pay us; and further we were ready to second anything that the United States would do to secure this result. More, we are willing to do anything to secure peace on the basis of territorial integrity.

Mr. DUNNELL:

Q. When you speak of £45,000,000 sterling you do not mean that the *Crédit Industriel* had advanced that amount, but had assumed that amount of responsibility?—

A. They are by their arrangements the representatives of the greater part of this amount, though they themselves hold a large amount. Yes, they have under the contract assumed the responsibility of the payment of the total debt.

Q. How much of the bonded debt was paid off between 1872 when you assumed it, to the time hostilities commenced?—A. None. It has never been paid. There were

some payments made on the nitrate debt, but that had nothing to do with the other. The Dreyfus, and I do not remember who the other was negotiated through, were consolidated in one loan.

Q. I suppose the *Crédit Industriel* had gone on for several years and had been expending money under the contract?—A. Yes, sir; they organized the *Compagnie du Pacifique* and capitalized it with 30,000,000 francs.

Q. But had not reduced the debt?—A. No, sir; it has never been in a position to do so; the war prevented their receiving the guano or nitrates. The only transaction that the *Compagnie du Pacifique* had in these articles was to get a transfer of some guano for more than it was worth from the Peruvian Guano Company, limited—of between three and four hundred thousand tons. They paid more for it than it was worth. It was a loss to the *Crédit Industriel* to take it, but they did it to prevent any one other than those interested with the bondholders from getting possession.

By Mr. BELMONT:

Q. I asked yesterday a question about the understanding of Mr. Trescot's mission. You have already stated that you understood that he would use his influence for the carrying out of this proposition; that is, that peace should be made on the terms that the territory of Tarapaca should be retained by Peru. Now, that is all you wanted, and further, that the Calderon government should be upheld.—A. That is all, and that the Calderon government should be upheld.

Q. Mr. Elmore represented the Calderon government here. I understand that he had been recognized here in Washington, and that Dr. Rosas in Paris had not been recognized.—A. On that point I would call the attention of the committee to page 599 of the documents. Mr. Morton, in his letter to Mr. Blaine, writes: I remarked that the United States and many other countries had already recognized the Calderon government, to which he replied that France had not yet done so, because it seemed to her that the Calderon government had rather the support of the Chilean Government than of the people of Peru; but that as soon as it appeared evident that it was national in its character, France would recognize it with pleasure. Subsequent to that the armies of the south, the armies of the middle, and the armies of northern Peru recognized the government of Calderon. This action on the part of the armies resulted in General Pierola, resigning all his pretensions to the dictatorship, and he is now in Europe. There is but one government in Peru to-day—the Calderon government.

Q. Did you understand, while in Paris, the reason why Dr. Rosas was not recognized?—A. That was the reason why, or so stated.

Q. Well, you did not understand any other reason while you were there?—A. No, sir; the same reason was stated to Dr. Rosas.

Q. Who informed you?—A. An officer of the government—the sous-secrétaire of foreign affairs of France communicated that fact to Dr. Rosas, when he made his application, who repeated it to me.

Q. Can you explain Mr. Grévy's course in sending for Mr. Morton for an interview in the absence of the minister of foreign affairs?—A. I cannot, sir.

Q. The minister of foreign affairs was not present at that interview?—A. I think not, sir; I would not be positive on that, but I think not.

Q. Did you see anything of the firm of Dreyfus & Co. while you were there?—A. A day or two before I left Paris I received a note, stating that Mr. Dreyfus desired to see me, and appointed the following morning, at half-past 8 o'clock, to see me.

Mr. KASSON. Do you want to examine into these interviews with Dreyfus & Co.? I do not see the necessity for that.

Mr. BELMONT. Well, I should like to ask some questions on that; they may be pertinent.

By Mr. BELMONT:

Q. Did not Dreyfus have some relation to the *Crédit Industriel*, or to the bondholders' committee?—A. He had at the time I saw him.

Mr. BELMONT. Exactly. That is the reason I asked the question.

Q. Didn't he have some relations to President Grévy in former times?—A. I do not know that; I always understood in Paris that Dreyfus was a personal friend of Grévy's. In answer to the question, however, with the permission of Mr. Kasson, I will say that Dreyfus sent for me and I called, and he expressed his desire, and understanding his close relations with President Grévy, I deemed it important that the United States would act and do all that they could toward bringing about a peace. He said he had been represented as being adverse and opposed to the *Crédit Industriel*; he desired to say that their interests were common interests; Peru owed him large amounts of money. They could not be paid unless these properties could be secure to Peru.

Q. Do you know whether the Shipherd claims—and I mean by these the Cochet and Landreau claims—were ever recognized by the Calderon government?—A. They never have been, sir; of that I am positive. I know they are denied.

Q. You are positive, then, that the Calderon government only looked with favor on friends of the *Crédit Industriel*?—A. Those are the instructions which I understood Messrs. Elmore and Rosas have had.

Q. Was recognition of the Calderon government necessary to the carrying out of this programme?—A. No; I cannot say that. Any government of Peru was bound by the contracts made in 1870 and 1872 with the *Crédit Industriel*; they were executed under an act of Congress, and any government would have to abide by the actions of their predecessors. We represent the nature of a national loan, exactly as if we held in this country our 4 per cent. or 5-20's United States bonds.

Q. You are positive that the Calderon government was favorably disposed to your programme, and did not intend to have anything to do with the plans of Mr. Shipherd?—A. I am positive on these points. At no time had the Calderon government any sympathy whatever with the Shipherd Peruvian Company.

Q. I refer to my previous question about the dispatch of August 4. You are positive that that was in conflict with your programme? If you will refer to the dispatch you will be able to answer the question; it was about these claims; it is page 508, I think; it may be well for you to look at that carefully, as it refers to that same territory in which the Landreau claims were located; I mean, for instance, this clause: "I desire, also, to call your attention to the fact that in the anticipated treaty, which is to adjust the relations of Chili and Peru, the latter may possibly be compelled to submit to the loss of territory. If the territory to be surrendered should include the guano deposits, which were discovered by Landreau, and for the discovery of which Peru contracted to pay a royalty upon the tonnage removed, then the Peruvian Government should stipulate in the treaty for the preservation and payment of the amount due under his contract," and then it ends by saying, "You will take special care to notify both the Chilian and Peruvian authorities of the character and status of the claim, in order that no definitive treaty of peace shall be made in disregard of the rights which Landreau may be found to possess." Now, do you know whether this claim covered that territory of Tarapaca?—A. The Landreau claim covered guano deposits; that territory, I believe, was included; Tarapaca contained the nitrate deposits.

Q. It was the same territory in which you were interested?—A. Yes, sir; the same territory which had been pledged by Peru for the payment of this bonded debt.

Q. So this was directly in conflict with your proposition; that is, if the Landreau claims had been recognized in the treaty of peace, in connection with this territory, you would have been left out entirely?—A. We should have been a great way off from getting our just claims or Peru being able to pay her just and legal debts.

Q. Then, did you understand in your last interview with Mr. Blaine that your plan was to be carried out?—A. At the first interview with Mr. Blaine I laid before him our programme, also the papers, and likewise communicated to him the substance of the interviews I had with Mr. Evarts. I discussed the whole subject with him; I found, as I have already stated, Mr. Blaine perfectly at home on the subject; I saw that he was gratified and pleased that we were in a position to tender our offices to Peru, and I understood him that he thought there was no reason why the United States should not accept the protectorate over this territory. At no subsequent interviews did he give me the slightest reason to presume he had changed his plans or views. My last interview was on the 10th or 11th of December, 1881.

Q. This letter of the 4th of August was sent while you were in Europe?—A. Yes, sir.

Q. When did you see Mr. Blaine after your return from Paris?—A. On or about the 23d November.

Q. Did you at that interview discuss the nature of your business in Paris?—A. Yes, sir.

Q. Did you then still understand that the plans were looked upon with favor?—A. Yes, sir.

Mr. BELMONT. That is the reason why I asked whether this dispatch was in conflict.

Q. If the Landreau claim had been recognized in that territory would you not have been deprived of your rights?—A. We would undoubtedly have been postponed a long period before having the debt recognized paid to us if the Landreau claim was to be paid first.

Q. I am only trying to discover how far Mr. Trescot's mission had a bearing on this case. Did he (Mr. Blaine) mention the Cochet or Landreau claim?—A. He did on a subsequent occasion.

Q. Will you state in what regard and how he referred to them?—A. He asked me if I knew anything about the Cochet and Landreau claims, and what further I knew as to the Shipherd Peruvian Company. I replied that my knowledge of these claims was almost entirely derived from what I had read on the subject in the papers and from the prospectus of the Shipherd Peruvian Company. That from the same it was clear to me that Cochet had no claim whatever against Peru, and if he had, I did not see how the United States could father or press it. I was going on to give my reasons when he interrupted me, and told me that he agreed with me as to the Cochet claim; that

he with me considered he had no status upon which the United States could interfere, but that he (Mr. Blaine) wanted to know whether I knew anything about the Landreau claim, as it had been pressed lately upon his attention. I answered that I did not see that Landreau was any better off than Cochet; that in my opinion the claim had no equitable grounds on which any court of equity in the United States would recognize, but without regard to its merits he (Mr. Blaine) was justified in keeping clear of it, owing to the fact that J. Théophile Landreau was a French citizen, and that J. C. Landreau, the alleged American, had acquired his interest in the claim under any circumstances prior to his becoming a citizen of the United States, and consequently there was no substantial reason why he should embarrass or trouble himself with these claims.

Q. Did he seem familiar with it?—A. No, sir; I thought from his manner in asking about it that he wanted to learn something.

Q. Did he say anything about having sent instructions?—A. No, sir, not at all. I was given to understand by him that he knew nothing about the merits pro or con.

Q. You continued under the impression that he still favored your claim?—A. I was under the impression that his only object was to secure peace, and that he knew he could secure peace in no other manner but upon the adoption of our programme.

Q. While you were in Europe did you obtain any knowledge of the views of the French in regard to this subject?—A. I have already stated that I did. I knew personally, however, that Great Britain had taken an interest. My first information was when I was there in September, 1880, on my first visit.

Q. Through whom did you receive this information?—A. Through Sir Edward Thornton.

Q. He had made a proposition to this government?—A. I understood him to say that he had made two propositions to Mr. Evarts, which had been declined, and he seemed to be quite sensitive on the subject; he indicated that he had not been treated fairly by Mr. Evarts, that he had not been told the truth as to the course the United States had been pursuing.

Q. Have you any knowledge of recent action on the part of England in relation to these matters?—A. I received information from my clients some time ago, not recently; last summer when in Paris. I knew then from our correspondents in Lima that the English and French ministers at Lima had shown a decided partiality towards the Chilians and in opposition to the views of General Hurlbut, who was there then. We secured instructions from France to their representative at that time that he, the French minister, should act in concert with the American minister. We had information that General Lynch and the others who represented the Chilean Government in Lima were in constant daily intercourse with the English and likewise to a great extent with the French minister; that the two ministers had stated to our agents that it was absurd to object to the proposition that Chili should not retain the territory of Tarapaca, and said to our agents, How can we ask Chili to surrender Tarapaca when Germany took Alsace and Lorraine—that is a case in point in which France submitted to just such a demand, and they assumed that such an arrangement would be the basis of the settlement in the matter of Chili and Peru, and justification for taking this territory from Peru.

Q. You know of no recent action on the part of these governments referring to Chili or Peru?—A. I know nothing except in reference to arrangements which have been made by Anthony Gibbs & Sons with a view to sell guano for Chili in England, and the recent notice of Chili of her intention to sell a million tons of guano; also the increase of England's maritime forces on the west coast of South America; she has increased her fleet there from 4 to 7 iron-clads.

Q. Did you or any of the agents of the Crédit Industriel, at any time, have any connection with the claims referred to?—A. Mr. Shipherd made two or three efforts to see Mr. Suarez, but he declined to see Mr. Shipherd.

Q. Have you read the instructions of Mr. Blaine in which he declines to have anything to do with the Crédit Industriel, and so instructed the minister?—A. Yes; but I must say that I think that it is a misprint.

Q. You read the testimony?—A. Yes, sir; I read it in the newspaper.

Q. Your impression is that it is a misprint?—A. Yes, sir.

Q. Why do you think so?—A. Because I personally understood him differently. I never understood him to say that he rejected our proposition.

Q. Then you understood to the contrary?—A. Yes, sir.

Q. Referring to your testimony of yesterday, what per cent. did you offer the house of Maitland, Phelps & Co.?—A. Three per cent.

Q. Was that the same commission named in the original contract with Morton, Bliss & Co.?—A. No, sir; Mr. Bliss stated that 3 per cent. would not pay; he stated that from the first; it was after cabling by Mr. Suarez that Geautreau & Co. acceded to the 5 per cent., and in so doing wiped out their own commission so far as the United States was concerned; in other words, the Crédit Industriel lost nothing by the increased commission to Morton, Bliss & Co., but the agents, Geautreau & Co., had to

deduct the increase, 2 per cent., out of their own commission and give it to Morton, Bliss & Co.

Q. Are you familiar with transactions of that nature, and can you say what is the ordinary commission?—A. No, sir; I know nothing about it.

Q. Mr. Morton you said had no curiosity to know anything about these transactions when you saw him in Paris?—A. He expressed no desire to know. I had no communication with Mr. Morton on the subject than what I have stated heretofore.

Mr. KASSON. Now, Mr. Randall, is there any additional statement which you care to make?—A. I do not know of any. Yes, there is one thing which suggests itself to me. I desire most emphatically now and here to say that neither I nor any representative whatever of the *Crédit Industriel*, either directly or indirectly, ever had any business relations or any relations other than personal acquaintance with General Hurlbut. It was stated on two or three occasions, I think, by Mr. Shipherd in his examination, that General Hurlbut—I think he used the words—"had been bought." I desire to say that the *Crédit Industriel* never has expended a single cent in any shape or form, nor made any promises; I repeat, she has never made any actual payments of any sort or description to buy anybody, and so far as General Hurlbut was concerned, they had no intercourse with him either in writing or personally, nor with anybody else for him. We have never had any intercourse with anybody representing the government other than Mr. Evarts and Mr. Blaine.

And I desire further to state, in reference to a letter written by General Grant to Mr. Elmore, that on or about the 25th or 26th of November, Mr. Elmore communicated to me the fact that he had received such a letter. I asked him to send it to me, which he did, and on visiting Washington about the 1st of December, I read that letter to Mr. Blaine on my own personal responsibility without consulting anybody. I had no idea then that it would ever be made public, or I should not have taken that liberty. My relations with Mr. Elmore are of the closest character. They might almost be considered as those between counsel and client; I therefore took that liberty. I had no idea the letter would be made public; but I now desire to clear Mr. Elmore of any responsibility or knowledge in connection with it. My object in showing the letter to Mr. Blaine was that he should know the opinion of an Ex-President, standing in the position in which General Grant does before the world, and to show to Mr. Blaine further that General Grant—who certainly must have a very positive and accurate knowledge of political affairs in South America, and consequently his opinion was worth having—entertained a very decided opinion as to the government's course; and further, to show Mr. Blaine that if there were any factions in the Republican party, so far as any faction was represented by General Grant, it was in accord with the policy which I understood Mr. Blaine to be carrying out. Of course I did not think it necessary to corroborate this by any reference to the Democratic party. Democrats are, and they always have been, so thoroughly identified with the Monroe doctrine that I saw no reason for doing so.

In reference to Mr. Suarez, who is absent from this country, I beg to communicate, at his request, that I received on Monday from him a long statement, which he has evidently prepared with great care, in regard to this matter. I am having it transcribed, and will send it to you, Mr. Kasson, when completed. It is very voluminous. He was the agent and I was the counsel. He requests me to annex it as a statement by him and have it incorporated in my evidence. I ask permission to do so.

Mr. KASSON. Well, sir, you may submit it, or you can forward it to Mr. Williams, the chairman of the committee, at Washington.

Mr. WILSON. Mr. Randall, you have been long upon the stand; but I would like to ask you one or two questions which will not detain you long. Will you make a little more clear the mediation of this government between Chili and Peru which you speak of as being in accord with the wish and desire of the *Crédit Industriel*? I want you to state a little more specifically whether the policy of the government was prompted by any influence or desire on the part of the *Crédit Industriel*.—A. Not at all, sir. I will add that I understood, in Paris, in September, 1880, and I so informed at my first interview Mr. Evarts, that their desire was to secure peace between the two countries, and to secure at the same time to Peru its territory, and I simply came forward to notify the government that we had the means of doing this.

Mr. WILSON. Now, we will take the letter of Mr. Evarts, of the 17th of February, where he uses this language: "I am always ready to press the mediation of this government towards an early and honorable peace between the belligerents; that the financial facility and aid which the private interests (private interests, mind you) he represents can furnish towards a liquidation of the pecuniary obligations that the war may have created, and which may need to be met, are calculated to assist the restoration of peace." Now, your plan, if carried out, was simply with a view of putting Peru in a position which should enable her to pay off this money indemnity; but the action of this government, either by Mr. Evarts or Mr. Blaine, was controlled in no event by the wishes or desires of the *Crédit Industriel*.

The WITNESS. We asked no favor whatever of Mr. Evarts or Mr. Blaine to press our

interests in this affair. We simply stated that we were interested to this extent in Peru, and that we were interested in her preserving her territorial integrity so that she might pay us that which was a recognized debt, and we wanted to satisfy her that we could aid her—that we were ready to stand as sponsors, I might say.

Mr. WILSON. And what you did was done in accordance with your Democratic opinions of and with due regard for the Monroe doctrine?

The WITNESS. Yes, sir; that is it. I was asked in the early part of my testimony as to whether I was not surprised at Mr. Blaine's letter to General Hurlbut of the 4th of August, and whether it was the first knowledge I had had that Mr. Blaine had made a departure from our programme. I beg to say, in this connection, that I was much more surprised when I read his cablegram to General Hurlbut dated Washington, October 27, 1881:

“HURLBUT,
“Minister, Lima:

“Influence of your position must not be used in aid of Crédit Industriel or any other financial or speculative association.

“BLAINE.”

And when I recall my interview with him, Mr. Blaine, on the 23d of November, which interview I believe I can state within bounds was at his own invitation, since I was advised by Mr. Elmore that he had inquired of him why I did not visit Washington and see him (Blaine), and at this interview his anxiety to know from me what my clients were doing and what they learned from their correspondents in Peru. Peru has been prevented by the declarations of the United States, officially made, from accepting the aid from those countries in Europe who were most anxious to give her aid and every protection in her hour of trouble. England and France, and I believe other nations, certainly those named, have more than once asked to be permitted to unite with the United States in bringing about peace based on the payment of an indemnity and the preservation of the territorial integrity of Peru, but the United States, under both the direction of Secretaries of State Evarts and Blaine, have positively declined to accept the same, and in all their instructions to their representatives abroad directed them to decline any such interference with the United States prerogative of controlling, directing, and settling all matters connected with the American continent. Under these circumstances we respectfully insist on the United States so aiding a sister and so weak a republic as Peru to secure that which she asks of her—help and aid in her troubles to maintain her independence and her existence as a republic. More, she begs protection—protection voluntarily offered and assured by the United States to her; and the creditors of Peru ask likewise that the United States will keep her good faith in part thus given to them in this affair and not leave the matter in the present unjustifiable position, hoping the United States will see it is her true interest to openly assume the responsibility which her position and political strength give her, the protectorates of American republics. This position is conceded to her by Europe and recognized by America. Consequently, we ask only that she will exert her moral influence. That would be all that is necessary; and I take this opportunity in conclusion, through your committee, to renew our offer. The Crédit Industriel are ready to do their part, and to do it promptly, and to carry out her propositions communicated to the United States and Chili and made to Peru. They are even prepared to go farther if necessary.

By Mr. KASSON:

Q. When did you first become aware of this dispatch?—A. When it was published, sir.

Q. Did you see the Secretary on or after the sending of that dispatch; you said, did you not, that you saw him about the 30th of November?—A. Yes; I saw him on the 23d, 27th, 28th November, and 1st of December, also on the 10th or 11th of December.

Q. And that dispatch was sent on the 27th of October?—A. Yes, sir.

The committee here at 3.45 o'clock adjourned.

The subcommittee of the Committee on Foreign Affairs of the House of Representatives met in their room at the Fifth Avenue Hotel, New York, on Friday morning, May 12, 1882.

Present, Messrs. Kasson, Dunnell, Wilson, and Belmont.

The Sergeant-at-Arms reported that he had notified, pursuant to the order of the committee, Jacob R. Shipherd, to appear before the subcommittee at their room in the Fifth Avenue Hotel at eleven o'clock this day; that the said Shipherd declined

to appear at that hour, and gave his reasons therefor in a letter to the Sergeant-at-Arms as follows:

"THE PERUVIAN COMPANY,
("Post-office box 3448. 10 Spruce street, New York.)
"May 11, 1882.

"DEAR SIR: I cannot waive peremptory engagements made for to-morrow upon so short notice. Moreover, I cannot complete my arrangements for a final examination until I have received the official record of Senator Blair's testimony, for which I wrote Mr. Williams some days since. Beyond this, I think the subcommittee will hardly choose to pass upon some motions I am advised to submit when I reappear. I will meet the subcommittee on Saturday morning, if desired and so advised, or I will meet the committee at Washington next week, as soon as I can complete my preparations.

"Very respectfully,

"J. R. SHIPHERD.

"Col. GEORGE W. HOOKER, *City*."

Thereupon the subcommittee, after deliberation, passed the following order unanimously:

"*Ordered*, That the witness, J. R. Shipherd, having declined to appear this day, as notified by the Sergeant-at-Arms, alleging, as his excuse, that he has applied for, and has not yet received, a full copy of the testimony contradictory to his own, given before the full committee in Washington; and it further appearing that he demands the right to introduce a large mass of matter, upon the admissibility of which questions will arise which ought to be submitted to the full committee, and that the witness desires to be heard by the full committee; Therefore,

"*Resolved*, That the examination of said Shipherd be adjourned before the full committee to meet at Washington on Wednesday, the 17th instant."

Thereupon, it was further—

"*Resolved*, That the subcommittee stand adjourned until to-morrow at ten o'clock for the revision, by witnesses, of the testimony already taken."

Pursuant to adjournment, the subcommittee of the Committee on Foreign Affairs of the House of Representatives met in their room at the Fifth Avenue Hotel, in the city of New York, at 10 o'clock a. m., on Saturday, the 13th of May.

Present, Messrs. Kasson, Wilson, and Belmont, Mr. Dunnell having returned to Washington because of important business.

The witness, George Bliss, appeared, revised and signed his testimony given on Thursday, the 11th instant.

The committee being informed that the condition of the witness, Robert E. Randall, was such that he was forbidden by his physician to commence the revision of his testimony yesterday, and until 2 o'clock to-day, and it further appearing that the same cannot be concluded to-day, owing to the continued illness of the witness, it is therefore

Ordered, That the subcommittee stand adjourned until 10 o'clock on Monday morning, at the same place.

The subcommittee of the Committee on Foreign Affairs of the House of Representatives met in their room at the Fifth Avenue Hotel, New York City, at 12.30 o'clock on Monday the 15th instant.

Present, Messrs. Kasson, Wilson, and Belmont.

On being advised by the clerk that the witness, Robert E. Randall, had been unable, from illness, to complete the revision of his testimony, and further attention thereto being, by the advice of his physician, postponed to 2 o'clock this afternoon, the committee adjourned until 7 o'clock this afternoon.

Washington, D. C., May 17, 1882.

The committee met at 10 a. m., and immediately went into executive session.

After the doors were reopened, Mr. Jacob R. Shipherd was called before the committee, and he was interrogated as follows:

By the CHAIRMAN:

Question. I am directed by the committee to put to you the following question: The Committee on Foreign Affairs are directed, by order of the House, to demand from you

copies of all correspondence between yourself and any person or persons whomsoever, and all papers and other evidences in your possession tending to show what you did, or attempted to do, to enforce the claim of the Peruvian Company, or to induce the United States to enforce this claim against Peru. Are you now prepared to furnish the documents here called for?—Answer. I am not.

Q. Are you prepared to furnish, and will you furnish, all papers and other evidences in your possession tending to show what you did, or attempted to do, to enforce the claim of the Peruvian Company, or to induce the United States to enforce this claim against Peru?—A. I will not.

Q. Do you positively decline to produce the papers and evidences called for?—A. I do.

The CHAIRMAN. What is the further pleasure of the committee?

Mr. RICE. I move that the committee go into executive session.

The motion was agreed to.

WASHINGTON, D. C., *May 23, 1882.*

The committee met at 10 o'clock a. m.

Hon. ROBERT R. HITT appeared, and was duly sworn.

By the CHAIRMAN:

Question. Please state your name and residence.—Answer. My name is Robert R. Hitt; I reside at Mount Morris, Ill.

Q. You have been Assistant Secretary of State?—A. I have.

Q. Please state when and by whom you were appointed.—A. I was appointed by President Garfield, I suppose at the suggestion of Mr. Blaine, about the 24th or 25th of March, 1881.

Q. Who was Secretary of State during your service as Assistant Secretary?—A. James G. Blaine.

Q. Did you resign your position as Assistant Secretary of State?—A. I did.

Q. About what time?—A. About the middle of December last.

Q. Do you know of any minister plenipotentiary of the United States who was personally interested or improperly connected with any business transaction in which the intervention of this government was requested in the affairs of Chili and Peru?—A. I do not.

Q. Have you any knowledge, personal or official, of a contract made between the house of Morton, Bliss & Co., and the Crédit Industriel of Paris, or a French company known as the "Compagnie Financière et Commerciale du Pacifique"?—A. None whatever, except what I have learned recently from the newspapers.

Q. Have you any personal knowledge of any negotiations between this company or any of its agents, and the Secretary of State. If so, please state fully all you know as to such negotiations; where they were had, who was present, and what was said.—A. I did see, very soon after I entered the Department of State, a gentleman who appeared as the accredited representative of that company, the Count de Montferrand, and arranged for him an interview with the Secretary of State, which was held, I think, on the 2d of April, 1881.

Q. How long before the 2d of April was it that you first saw this gentleman?—A. Three or four days, or possibly more. He was daily at the department; and I suppose that I always saw him when he came, because he did not speak English, and he naturally sought me to talk of his project and his interests. The interview with the Secretary of State was held, I think, on the 2d of April, and I was present to facilitate the conversation, because the Count did not speak English.

Q. Was any one else present at that interview?—A. None other than the Secretary, the Count, and myself.

Q. Will you please give to the committee as nearly as you can, an account of what took place at that interview?—A. The Count stated briefly, what the Secretary already knew something about, his position in relation to the company, his credentials from the president of the company (the Crédit Industriel), and the character and financial standing of the company itself, which I confirmed somewhat to the Secretary, knowing myself a little of affairs in Paris. Then, after a reply of courtesy by the Secretary of State to the effect that he appreciated very much the high standing of a gentleman so presented, and that he had no doubt of the respectability of the parties composing the Crédit Industriel, the Count entered upon his scheme or programme, which was to endeavor to arrange terms of peace between the belligerents in South America. The great difficulty in making peace, as he stated, was to arrange the financial side of the question; to save Peru from dismemberment by a financial indemnity to Chili. The programme his company presented, was to take the region in dispute, and then held by Chili, where are the deposits of guano and nitrates, place them under a protectorate of the United States as a kind of international trustee, and then, that pro-

tection guaranteeing order and neutrality, to turn over these deposits to the *Crédit Industriel*, which should work them or at least have charge of the shipments, and the whole of that commerce should thus become a monopoly. It was by thus making it a monopoly that he computed such gains could be made out of the exportation of the guano and nitrates that an indemnity could be paid to Chili of twenty or twenty-five million dollars, and some two million or more per annum afforded to Peru to enable her to carry on her government, after which something would be left to pay interest on the Peruvian bonds. Mr. Blaine replied that a protectorate of that kind was not in the spirit of our policy as a country, and that he could not assent or agree that the government would in any case assume a position as international trustee, or guarantee an indemnity. In repeating this conversation, I do not pretend, of course, to give the precise language, for, as the gentlemen of the committee are well aware, in diplomatic interviews the phrases used are carefully guarded, and full of cautions and reserves.

Q. We only ask for the substance of the conversation according to your best recollection of it.—A. Mr. Blaine added that he saw much apparent merit in the scheme, and he was heartily in favor of the object proposed, which was a permanent peace between those warring nations, and that he had hoped there might be peace without the dismemberment of Peru. The Count, in his statement at the beginning, and again further on, urged a renewed mediation by the United States between those parties—an offer of its good offices again, and spoke of the horrors of the war and the duties of nations to each other, and mentioned such considerations with much force. Mr. Blaine said that he would be glad to do anything in the way of friendly offices to stop bloodshed and war, that he possibly could, but that this country had tried by mediation to arrange terms of peace twice, and he did not think it wise to offer to mediate again unasked; and if such an offer were made by this country he thought it would be fruitless. The Count again renewed once or twice, in a different form, his proposition that the United States should present this programme to the belligerent nations, assuring the Secretary that so many of the Peruvian bondholders were citizens of England, France, Belgium, and Holland, that it was certain that those governments would indorse our action in this direction.

By Mr. BLOUNT:

Q. Was Italy one of the governments that he referred to also?—A. I do not remember that he spoke of Italy. My recollection is that he spoke of it in connection with the bondholders, and that the interest of the government would follow the interest of its citizens. Mr. Blaine reminded him, in very courteous phrase, that he was a foreigner, and asked him why he did not see Mr. Outrey, the French minister, with him. He said the company is a foreign corporation, and we cannot adopt its programme or present it. The Count replied to his suggestion that Mr. Outrey's presence would have been agreeable that he had before been to the department and had seen Mr. Evarts, the Secretary of State, and their relations had been direct at that time, and therefore he had deemed it proper to come again to the Secretary direct, though he was foreigner, without the intervention or presence of his minister. He also stated that the suggestion he had made of mediation was not in the interest of any special nation, but in the interest of humanity, such as any man might make. Mr. Blaine expressed his sympathy in the view which the Count had uttered of the regrettable character of the strife that was going on, and that he desired to stop it, but said he could do nothing and could promise nothing as to the proposition of this corporation. The Count asked him if he would not do as much as Mr. Evarts had done; that is, make it the subject of a diplomatic correspondence, and put those things in writing which he had said and which were not unfavorable to the company. He said it would aid greatly their purposes if the Secretary would do this. Mr. Blaine gave him no assurance, however, upon that subject. I do not remember just the form of phrase with which he turned it aside, but it was one which the Count understood very well, and we left the room after further interchange of the commonplaces. When we returned to my room—

Mr. WILSON. Yourself and the Count?

The WITNESS. Yes, sir; which adjoined that of the Secretary, he seemed a little discouraged, comparing the status in which he found his interests there with what they had been, and asked me if he might correspond with me about the matter; that he hardly felt at liberty to write directly to the Secretary of State after the remarks that had passed and the suggestion made by him which had not received a response. I told him I would be glad to hear from him at any time.

By the CHAIRMAN:

Q. In this interview, how far did he seem to press the suggestion of an American protectorate as an auxiliary to their interests, or the interests of his company; how much did he seem to dwell upon that in this interview?—A. That was a necessary part of his scheme; that appeared in the development of it at the beginning, when he explained his programme. I do not remember that the Secretary interrupted him at that point with an objection. The interview was much in the way of colloquy.

By Mr. BELMONT:

Q. Do you understand that Mr. Evarts was in favor of a protectorate?—A. I have never had any understanding about that; I have simply seen one dispatch of Mr. Evarts on that subject.

Q. I think in that dispatch Mr. Evarts states that the government does not look with favor upon it.—A. I have no knowledge of the position of Mr. Evarts beyond what is contained in the printed dispatches; none whatever.

Mr. BELMONT. I only wanted to find out how the position of Mr. Blaine would differ from the position of Mr. Evarts in regard to the plans of the company.

By the CHAIRMAN:

Q. Did it seem to be his motive to urge this American protectorate in the interests of his company; did that seem to be his mission with the Secretary of State?—A. His motive was, plainly, to forward the interests of the company, which was to receive a commission.

Q. Of course I inquire simply as to what you gathered from the interview.—A. In the proposition, as it was made as a whole, the most important point in it to us as a nation was the question of a protectorate, and this, by his scheme, was to be proposed by this government.

Q. In this interview, did the Secretary of State, in any manner, hold out any encouragement that he would entertain the proposition on behalf of this French company?—A. No; he did not.

Q. Did he positively negative that idea?—A. He did. But I would not say that he said, bluntly, "no." He did that by saying that the foreign nature of the corporation was an obstacle which was insuperable, by saying that the protectorate was not in the way of our policy, and by in many ways showing, throughout the interview, that he would take no step to forward that particular method, or to commit himself to favoring that particular method of doing, what everybody wanted done—that is, obtain peace.

Q. Now, returning to the point where I interrupted you, will you please proceed with your statement as you were giving it?—A. I have stated all that I remember at this moment of that interview.

Q. You were speaking of his proposition, in your room, to hold some correspondence with you.—A. Well, he subsequently wrote me a letter from Port-au-Prince. He was at that time going to Hayti. That letter is found in the printed volume as well as the answer which I sent him. I had no further communication with the Count after that.

By Mr. BLOUNT:

Q. Is all your correspondence with him contained in this volume? [Referring to Senate Executive Document No. 79.] A. Yes, sir; it is all in this volume.

By the CHAIRMAN:

Q. Did Count de Montferrand, to your knowledge, have any other interview or interviews with the Secretary of State?—A. I am very sure that he did not, because he went away very soon afterwards, and, as he did not speak English, I would have been such a convenience at the interview that I suppose I would have known it. There was no other interview.

Q. Did any correspondence, to your knowledge, pass between them?—A. There was none to my knowledge; and I can almost say positively that there was none at all, because he spoke of the subject after leaving the Secretary's room, as he had spoken of it in his room, and there was no suggestion on his part that he intended to write to the Secretary. I know of nothing being sent from the department to him except my letter.

Q. Was there any interview between Mr. Suarez and the Secretary of State touching this matter?—A. Mr. Suarez was a name included in the credentials presented by the Count de Montferrand when he appeared; and some time after his departure Mr. Suarez appeared at the department. Whether he had any interviews with the Secretary of State or not, I do not know. I never was present at one.

By Mr. BELMONT:

Q. He spoke English, did he not?—A. Yes, sir; he spoke English.

By the CHAIRMAN:

Q. You know of none yourself?—A. I know of none; I never heard the Secretary mention one.

Q. Did the Secretary write Mr. Suarez, or hold any correspondence with him to your knowledge?—A. None to my knowledge; and I have that impression very strongly fixed in my mind from the fact that the Secretary never mentioned it to me, and from the fact that Mr. Suarez often spoke to me on the subject, saying that he could not get anything from the Secretary. For that reason I think there was no

such correspondence. Mr. Suarez was repeatedly at the department, where he appeared in the interest of the *Crédit Industriel*, urging action and recognition of that corporation, and discussing the general subject of the Peruvian and Chilean question, and it was toward the latter part of Mr. Blaine's term (the date I cannot now recollect) that he was very pressing, wishing me to secure him an interview with Mr. Blaine, and wishing me to speak to Mr. Blaine on this subject on which he had talked to me, and desiring if he could get nothing else, to have a letter from Mr. Blaine directed to himself giving his view of the matter; that is, if he could not get an instruction to the minister. More than once he spoke of this, for he was there frequently at that time. One day he said that he hoped he could get at least an acknowledgment of a letter—some recognition of the existence of their project. I told him I thought he could; that the Secretary would probably write him a brief answer, though I could not promise it. He said then that he would prepare such a letter as he had spoken of, setting out their project and its condition at that time, in order to obtain this response. He did so, and brought and gave it to me; but Mr. Blaine would not authorize any answer, nor make any answer. I gave the letter to him, but there was nothing done, and thus the matter stood when Mr. Blaine went out of office. That letter is in this volume. You will see the reference in the beginning of the letter, to this desire on Mr. Suarez's part to have some sort of answer.

Q. I understood you to say before you were called as a witness that you were not present at any interview between Mr. Randall and the Secretary?—A. I never was.

Q. Have you read Mr. Randall's testimony as published in the New York papers?—A. Yes sir: I have seen a brief summary of it in the papers.

Q. Have you any knowledge as to the matters to which it relates?—A. I have no positive knowledge of the statements that he makes. I read the testimony with some surprise, merely because of its being hardly consistent with these other facts which I have just stated. Mr. Randall was of counsel for this very company. I heard of his being at the department, but did not meet him or converse with him.

Q. I will ask you if Mr. Suarez was pressing these matters in the same line that Count de Montferrand pursued?—A. The same. His line of argument and purpose were identical with those of the Count.

Q. Were you familiar with the history and manner of preparing instructions to our ministers while you occupied the position of Assistant Secretary of State?—A. I was.

Q. And were consulted in regard to those matters?—A. I was; not perhaps in regard to every matter, but I suppose with regard to important ones—in regard to most of them, in fact.

Q. Was the proposition of President Grèvy, as communicated by Mr. Morton, and by him transmitted to the Secretary of State or to the State Department, brought to your knowledge?—A. It was immediately, by the Secretary of State.

Q. Have you any knowledge as to the history of the reply which the Secretary of State made to that communication?—A. Yes, sir; I drew it after the direction of the Secretary of State.

Q. Will you please state then all that you know about it, as to its scope and purpose?—A. When the dispatch arrived from Mr. Morton it was the subject of some discussion by the Secretary of State, and, after some conversation about it (I think there was only a very little delay; it might have been the same day), he directed the tone of the answer and requested that it be drawn. I drew it almost exactly as it stands, the Secretary modifying the phrases in some places. There was no subject mentioned in connection with that dispatch, except those that appear in the dispatch.

Q. Was it confined to the matters of the *Crédit Industriel*, or to the general policy of our government?—A. In the conversation with the Secretary there was no mention of the *Crédit Industriel*, nor of any other private interest, nor anything more than these topics of general policy that are discussed in the instruction, as you see it.

Q. What I mean is, was there any discussion about it before the preparation of the dispatch, as to what it should apply to?—A. There was no mention of it.

By Mr. BELMONT:

Q. Then you think the *Crédit Industriel* was not in any way contemplated by that dispatch?—A. I know it was not.

Q. And then Mr. Morton's proposition was not taken into consideration in the answer?—A. It was not thought of by me. The suggestion never came to me in connection with it.

By the CHAIRMAN:

Q. Then, as you understood it, the dispatch was directed to the general policy of this government?—A. Solely.

Q. In connection with Chili and Peru?—A. Yes, sir; and in connection with European nations.

Q. Did Mr. Blaine in any way manifest hostility to the *Crédit Industriel*, as a company?—A. No; he did not. I never heard any expressions of feeling on his part of

favor or aversion in regard to that company, except those which occurred in the way of courtesies that passed in that interview with the Count. When discussing his position, and the character of the company, he used those kindly expressions toward him personally, and those assurances of his belief in the undoubted respectability of the company, which would naturally be uttered by a minister on the presentation of a man of his standing.

Q. What was his attitude towards the Cochet and Landreau claims, so far as you know?—A. The Landreau claim was mentioned pretty early in the period of his service in the department, and was repeatedly mentioned. The Cochet claim was mentioned later. The Landreau claim I heard spoken of as one entitled, from its history in the department and the government, to some respect. Of the Cochet claim there was little known; little in its favor. I had never heard Mr. Blaine, at that time, express any sentiment about either of them. Later I did. He spoke with very great decision in regard to the Cochet claim.

Q. In what respect?—A. Towards the latter part of his term of office he spoke of it as being convinced that it was a baseless and flimsy thing, and urged by a man who was not entitled to the consideration of the department.

By Mr. LORD:

Q. About what time was this interview between Count de Montferrand, the Secretary, and yourself?—A. I think it was about the 2d of April. It is mentioned by the Count in his letter, written subsequently, where he gives the date.

Q. At that interview was there mention of any other commercial project in South America to accomplish the same purpose (the readjustment of the difficulty and the raising of money) between Chili and Peru?—A. There was mention of a company which was a branch or offspring of this very company, the Crédit Industriel—the Pacific Company, I believe it was called. I have forgotten its name.

Q. Was there any other?—A. I can name no other that was mentioned, but I remember the Count's speaking of other interests that were at work in Chili—English interests.

Q. Was this Pacific Company an auxiliary or a rival company?—A. It was an auxiliary; it was an offspring of the Crédit Industriel.

By Mr. BELMONT:

Q. Did you understand that Mr. Elmore was also in favor of this plan?—A. I never discussed it with Mr. Elmore, except to hear him speak of it as a topic—as a matter of interest. Mr. Elmore did not appear here until very late in the summer or fall.

Q. Did you know that he went to Paris on the 9th of July with Mr. Randall?—A. I did not, except as a matter of rumor. I heard of it.

Q. You had not heard that the Secretary had given him a letter to our minister in Paris, Mr. Noyes?—A. No, sir; I never heard of it.

Q. You say you had been familiar with the company for some time previous to that?—A. No. I said I had heard of it and the parties connected with it as being parties of respectability.

Q. You heard of it in Paris?—A. Yes, sir, in Paris, where I had lived.

Q. You were there with Mr. Noyes?—A. I was.

Q. Do you understand that the Secretary objected to the company on account of its foreign character?—A. Yes, sir; he made that objection; and he also objected that the project was one that he could not adopt.

Q. Was there any suggestion of a union of interests with an American corporation in order to give it a position which the department could recognize?—A. No; not in that interview.

Q. Or at any time?—A. I never heard of it.

Q. You did not know the purpose of the mission of Mr. Elmore to Paris?—A. I did not.

By Mr. BLOUNT:

Q. Did I understand you to say that the Count de Montferrand was urging that this government should propose a protectorate?—A. Yes, sir.

Q. That was one of the purposes contemplated?—A. Yes, sir. That was part of the programme which he laid out, and which he wished proposed to the belligerents.

Q. You have already answered Mr. Belmont that there was nothing said at all in any of these interviews, to your knowledge, of any contract with Morton, Bliss & Co.?—A. It was never mentioned in the department while I was there, to my knowledge.

By Mr. LORD:

Q. You have said that you had numerous conversations with Mr. Suarez in regard to the subject-matter of this interview between the count, the secretary, and yourself?—A. Yes, sir.

Q. Extending over how long a period were they?—A. I should qualify my state-

ment that it was a conversation. Mr. Suarez appeared and spoke of this company and its interests, and then urged that he might see the Secretary, or asked if there was a hope of action, and if an instruction would be sent to General Hurlbut. It was that kind of a conversation—not a formal interview, as before. That began some time in the summer soon after his arrival; I think immediately afterwards, and he was frequently at the department until December.

Q. Mr. Suarez, I understand you, alleged that he had difficulty in getting communication with the Secretary; that is, that he received no acknowledgment of his letters?—A. Mr. Suarez was unable to obtain interviews with the Secretary, and in order, before the Secretary left office, to obtain from him some kind of recognition or consideration favorable to their programme, he wrote him a letter to elicit an answer, which he did not receive.

Q. In any of these conversations, did Mr. Suarez allege that there was any other American enterprise in his way, in rivalry with or in competition with the *Crédit Industriel*?—A. I have heard him speak of another enterprise or project. I do not know whether he considered it in his way or not. He spoke of it without much respect. I refer to the Peruvian Company.

By Mr. BELMONT:

Q. Was there ever any suggestion that the owners of the Landreau claim should unite their interests with the *Crédit Industriel*?—A. I never heard it, nor heard of it. I never knew who owned the Landreau claim. I supposed it was the man Landreau, one of our consuls.

Q. Is he here in Washington, now?—A. I do not know. I have never seen him.

By Mr. LORD:

Q. Did Mr. Suarez indicate an opinion that favorable consideration of any other interests was what, in fact, prevented his obtaining recognition?—A. No, sir. He never intimated that, nor insinuated that in the slightest degree.

By Mr. ORTH:

Q. I wish to ask you a question or two. At what time did you go into the State Department as Assistant Secretary?—A. I was appointed on the 24th of March, 1881, if I remember the date correctly, and I went to work immediately. I was not Assistant Secretary for some time afterwards, because the Senate was at a dead-lock and my appointment had not been confirmed.

Q. There are certain papers missing from the files of the State Department, which you will find described on page 741 of this document [Senate Ex. Doc. No. 79]. I wish you would look at the list there contained and state what you know in regard to them.—A. I first heard of these papers being missing from the files through the newspapers; that was after I left the Department. I never saw them that I remember, and I think I would have seen them if they had come to the Department. I suppose they would have come directly to my table from the chief clerk, after he opened the mail. I observe that the papers referred to are lengthy, and they are on subjects with which I afterwards became quite familiar, and I think I would recollect them if they had ever appeared on my table. I remember nothing about them. Such papers referred from the Executive come very frequently to the State Department.

Q. Please state to the committee the usual method of disposing of papers when they are received at the department; by whom they are received, and through whose hands they pass until they find their final lodgment in the department?—A. The general mail is received by the chief clerk and is opened by him. The indexing is first proceeded with, then the different parts of the mail are sent to the different officers in charge of the bureaus of the State Department. The consular correspondence, which is very extensive, is sent to the different Assistant Secretaries according to the respective countries from which it is received. The diplomatic correspondence also goes to the Assistant Secretaries of State or to the Secretary himself.

Q. The mail is all brought to the First Assistant Secretary?—A. No, sir; it is not all brought to the First Assistant.

Q. Please state what portion of it is brought to him.—A. The correspondence from the more important countries goes to the Assistant Secretary of State. The diplomatic correspondence generally, that is, upon important topics, lines of policy, and questions of that kind, ought to go to the Assistant Secretary of State or directly to the Secretary, if it is known that he is urgently desiring to consider any important matter to which it relates. Whether it goes to the Assistant Secretary of State or not, it would go to the Secretary. Where the correspondence was very voluminous it would go to the Assistant Secretary first, that he might present it in a brief, summary form so as to put the Secretary in possession quickly of the tenor of the matter.

Q. Then the diplomatic correspondence passed through your hands while you were Assistant Secretary of State?—A. It would not all of it necessarily pass through my hands, but I am pretty sure that this matter would have passed through my hands.

Q. Why?—A. Because I had that matter before me, or a great portion of it, and

the chief clerk would have sent it to me with the rest. I am very sure I would have known it. This was a topic involving a general line of policy and was a subject of frequent consultation and very careful consideration by the Secretary, usually held after the department was closed to the public; after office hours.

By Mr. BELMONT:

Q. Did not Mr. Trescot have this matter in charge?—A. Mr. Trescot had it especially in charge—more in charge than any one else besides the Secretary of State.

By Mr. ORTH:

Q. When you say that you had this matter somewhat in charge, do you mean to include the Cochet and the Landreau claim, and the Crédit Industriel—all of them; if not, which one did you have in charge at that time?—A. There was no correspondence in regard to the Crédit Industriel.

Q. None whatever?—A. None at all, except what appears in this book. There was no correspondence in regard to the Cochet claim, that I remember, except letters addressed to the department.

Q. There was nothing from the department?—A. There were instructions sent from the department to ministers, but no correspondence with interested parties that I know of, except as appears in this volume. Mr. Trescot was specially charged with the investigation of that Landreau matter, and the preparation of facts concerning it for the Secretary's consideration.

Q. What was Mr. Trescot's position in the department during the time you were there?—A. Mr. Trescot, at the time I entered the department, had returned recently from China, where he had been one of the commissioners representing this government, and he was at the moment occupied with his duties as a commissioner. While awaiting the conclusion of his duties in that capacity he was consulted in regard to, and his time much occupied by, the current questions of policy at the State Department, and he was continued for some time in that capacity. He was finally appointed, because of his great familiarity with the subject and his well-known character as an experienced diplomatist, a commissioner to the belligerent states in South America.

By Mr. BELMONT:

Q. Did he have charge of the drafting of the instructions or dispatches on these subjects?—A. He did not have charge of it exclusively; the Secretary kept everything on this question well in hand himself. But the Secretary would consult with him, and would discuss questions with him; would ask him to search out certain points, and would give him his ideas in brief, written or verbal, and Mr. Trescot would draw a dispatch when requested.

Q. I suppose, then, that he would be the most competent person to give evidence in regard to the meaning of a dispatch unless it was the Secretary himself? I think these two gentlemen probably would be most competent to give evidence upon the meaning of the instructions of June 15, for instance?—A. They would either of them know perfectly, I have no doubt, the scope of every phrase or word that was in the least obscure.

Q. They would probably know better than anybody else in regard to their meaning—either the Secretary or Mr. Trescot?—A. I think the Secretary would know best. He and Mr. Trescot would both know; either of them would know.

Q. And would know probably better than anybody else?—A. Yes, sir; possibly better than anybody else.

Q. Do you think they would be more familiar with the meaning of those instructions than yourself?—A. I do.

By the CHAIRMAN:

Q. To what extent were you consulted in regard to those dispatches?—A. The subjects discussed in the dispatches were subjects of frequent discussion, and when a piece of important news arrived, it was made the subject of consideration by the Secretary, and of discussion, as to its influence upon the question as it arose, the necessity of new instructions, the cast that they would have, and what should be done. The Secretary, Mr. Trescot, and myself often talked over these questions after office hours. This was perhaps the most important question pending. Then, when a dispatch was prepared, or was in the way of preparation, the Secretary would often read it to me, would talk about it, and would write upon it, and sometimes would charge me somewhat with the preparation of a special dispatch upon it.

Q. You mean these were subjects of discussion between the Secretary and yourself?—A. Yes, sir, and with Mr. Trescot.

By Mr. BELMONT:

Q. Do you know whether there was any conference with Mr. Trescot, Mr. Elmore, Mr. Randall, or Mr. Suarez previous to the sending of the instructions of June 15?—A. I do not.

By Mr. BLOUNT:

Q. I wish to ask a single question. Was it known at the time of the interview between Count de Montferrand and Mr. Blaine that a contract between Morton, Bliss & Co. and the Crédit Industriel had then been entered into?—A. It was not known to the Secretary nor to myself.

By Mr. BELMONT:

Q. I believe you said that you did not know Mr. Elmore's relation to these parties?—A. I did not.

Q. Was not Mr. Elmore the agent of the Calderon government, and afterwards recognized as the Peruvian minister?—A. Mr. Elmore appeared here as their accredited minister.

Q. Would it not be natural that you should have been consulted about this matter?—A. Mr. Elmore was not presented until nearly the 1st of October, I think. He was presented to President Arthur, I remember. I was present at the time.

Q. Was he not first recognized as the special agent of the Calderon government?—A. I heard that Mr. Elmore was here earlier in the season in the capacity of agent of the Peruvian Government.

Q. Here is a letter from Mr. Elmore to Mr. Blaine, dated May 4, 1881, in which he incloses his credentials. You will find it on page 482 of this executive document. That was after his reception by Mr. Blaine?—A. Yes, sir; there he was accredited as confidential agent.

Q. Of the Calderon government?—A. Yes, sir; it was the Calderon government at that time.

Q. Did you understand that Calderon was in favor of this plan of the Crédit Industriel?—A. I never heard that he was.

Q. And you did not hear that Mr. Elmore was, either?—A. No.

Q. And at the same time Mr. Elmore went to Paris, together with Mr. Randall, the counsel of the company, and the contract was signed in Paris after their arrival. Did those facts come within your knowledge?—A. I was not here at that time. During that month of May I was not in Washington, and not in America, if I remember aright. I heard of Mr. Elmore's visit there, and I knew by hearsay, by rumor, that he took an interest in this matter with Mr. Suarez. Mr. Suarez spoke of it; but I never conversed with Mr. Elmore about it at that time.

Q. I suppose all of Mr. Elmore's interviews were held with the Secretary, in fact, and the Secretary himself would best be able to testify in regard to this matter?—A. Yes; he could tell better than I could in regard to that.

The CHAIRMAN. I believe there are no further questions to be put to the witness. It is the purpose of the committee to examine Mr. Blaine to-morrow, and the clerk may notify Mr. Blaine that the committee will hear him at 10 o'clock.

Adjourned.

WASHINGTON, D. C., June 13, 1882.

The committee met at 10 o'clock a. m.

Hon. JAMES G. BLAINE recalled and further examined.

By the CHAIRMAN:

Question. Have you read the testimony of Mr. Robert E. Randall, given in New York in this investigation?—Answer. Yes, sir.

Q. Do you desire to make any statement in regard to the interviews therein referred to between himself and you touching the Credit Industriel?—A. I would be very glad, if agreeable to the committee, if, preliminarily, they would address such questions to me as they choose.

The CHAIRMAN. I was about to do that, and will if you prefer it.

The WITNESS. I understand, of course, that the committee will be willing to allow me to make such statements as I choose at the close of my examination. But before the examination is begun, Mr. Chairman, I would like to make just one brief remark upon a matter that is not in the direct line of the examination. After I was before the committee on previous days, there was a complaint made by the Associated Press that I had obtained or exercised some liberties connected with my testimony. They were only such as had always been granted, and I learned afterwards, with a great deal of surprise, that it had led to the removal or suspension of the agent at this place; and learning that, I addressed the following note to the general agent of the New York Associated Press, Mr. Hueston, which, with the leave of the committee, I will read, because it will take the place of the remarks I would have made on the subject

WASHINGTON, D. C., 19th May, 1882.

J. C. HUESTON, Esq.,

General Agent New York Associated Press, New York :

DEAR SIR: I have to-day for the first time heard that the late agent of the Associated Press in this city, Mr. W. P. Phillips, has been removed because he had permitted me to revise my testimony before the Committee on Foreign Affairs previous to its transmission by telegraph.

I asked of Mr. Phillips the same privilege that had been accorded to Mr. W. H. Hurlbut, editor of the *World*, who preceded me on the witness stand. I asked and exercised no further privilege than has always been granted to witnesses whose testimony has been transmitted in full by the Associated Press and accepted in the country as semi-official. I never saw and never desired to see the testimony of any other witness, and I made in the report of my own testimony only such corrections as were essential to accuracy—only such as I, in common with other witnesses, make in the official report of the stenographer of the House. I can imagine no grosser form of injustice than to deny to a witness the privilege of seeing his testimony before it is spread open to the world. By what rule do you establish the right of an agent of the Associated Press to determine just what a witness said? Courts of justice permit a witness to revise the report of his testimony; official committees do the same. Is the Associated Press to constitute itself an infallible reporter of what a witness said—and is there to be no appeal from its errors? I admit the general accuracy of Associated Press agents, but still they are men and liable to err, and I maintain that it is the right of every witness to determine himself what he said under oath. I maintain, moreover that it is the only method by which the Associated Press can protect itself, and the only way in which its reports can be made to correspond with the official report from which there is no appeal.

I have as little desire, as I have right or power, to interfere with the appointment or removal of your agents, but I protest against the assumption that I was accorded any privilege with my testimony save that which has always been given to witnesses, and which is indispensable to justice and fair dealing.

As an act of simple justice to all concerned, I ask that you will give this letter to the press.

Very respectfully,

JAMES G. BLAINE.

Mr. Hueston declined to give this letter to the press or to take any notice of it.

Mr. BLOUNT. That criticism does not relate at all to the official report made for the committee.

The WITNESS. Oh, not at all. I have a full right to revise that. But the Associated Press agent, I have so understood, is instructed not to permit me to see, or to show me the report that is made out under his direction. That is a new thing in Washington. I have been here twenty years, and I never have made a speech in the House or in the Senate in my life of any importance, where the notes of the Associated Press reporter were not submitted to me, and I have never spoken on any important occasion where the report of the Associated Press was not submitted to me. It would be assuming a degree of infallibility which no human pair of ears is quite equal to, to catch every word, every private name, and every personal allusion, and be absolutely correct. But, at the same time, if the Associated Press chooses to do it, I have no remedy except to simply say that it is an act of entire injustice. I do not desire to say anything further than that.

The CHAIRMAN. Are you now ready to proceed with the examination?

The WITNESS. Yes, sir.

By the CHAIRMAN:

Q. When did you first have any intelligence or knowledge of the *Crédit Industriel*, as near as you can now state?—A. I think I heard of it some time about the month of February, 1881. Mr. Robert E. Randall then called to see me at the Senate Chamber upon the presumption that I was to be Secretary of State in the forthcoming Cabinet of President Garfield. In conversation with him I waived the presumption that I was to be Secretary of State. I did not choose to hold any conversation of so contingent a character as that.

Q. After you became Secretary of State, did you first have an interview with him, or with the Count de Montferrand?—A. With the Count de Montferrand.

Q. About what date was that?—A. That was early in April. What did Mr. Hitt state? He would have it exactly.

The CHAIRMAN. I think his testimony agrees with Mr. Randall's.

The WITNESS. I have no contradiction upon that point.

Q. Please state where that was held, who was present, and what was said.—A. The

conversation with Count de Montferrand? He called to see me at the State Department; had several times called. Of course, I was very busy on other matters. He had been seeking an interview for a considerable period of time, and, finally, through Mr. Hitt, he obtained one. The only persons present were Mr. Hitt, Count de Montferrand, myself, and possibly my private secretary, who sat in the corner of the room; but I do not remember about that. I had an interview of possibly an hour with him. He unfolded to me very fully the scheme of the *Crédit Industriel*, which was already on file in a paper signed by himself and Mr. Suarez, and which I had examined previous to this interview, and had examined with a view to special preparation in reference to the interview. I heard him through, of course. He was a gentleman of character, and represented, as I have no doubt, an association of high respectability and of financial strength. But I told him that the action, which he desired on the part of the United States in the matter, was entirely inadmissible. The matter was one which I utterly refused to have anything whatever to do with. I told him I had no wish to obstruct him whatever; that if they could make any arrangement, through their own credit between Chili and Peru to ease the situation and bring relief, that the United States Government would be very glad of the result. But I do not believe that the people at large who take some interest in this, or so far as they do take an interest in it, yet comprehend at all what the *Crédit Industriel* wanted the United States to do. And it strikes me as one of the most remarkable phases of this somewhat remarkable episode in our foreign affairs, that newspapers of character are growling because the United States did not adopt the *Crédit Industriel*, and do what they wanted us to do. And with the leave of the committee, I will refer to a paper which was on file when I went into the Department, and which had been there forty or fifty days, which was put in on the 20th of January, I think, in which the *Crédit Industriel*'s aims were set forth, and a specific statement made of what they desired us to do. With the leave of the committee I will read that. It is as follows:

"The proposition which the *Crédit Industriel* makes has been submitted to you by Mr. Robert E. Randall"—

This is a letter to Mr. Evarts, dated Washington, D. C., January 20, and signed by Count de Montferrand and Mr. Suarez, who were the authorized agents of the *Crédit Industriel*.

By Mr. BLOUNT:

Q. That letter is dated January 20 of what year?—A. January 20, 1881; just before President Garfield's inauguration on the 4th of March. That was on my table when this conversation took place.

By Mr. RICE:

Q. And was this proposition substantially represented to you by them?—A. Yes; it was recognized to be the basis on which we talked. It was right before me as the basis, and I want to call the attention of the committee to it to show that, in my judgment, and if I mistake not in the judgment of the committee, the propositions were not only extraordinary but entirely inadmissible.

By Mr. DUNNELL:

Q. Do these statements differ from the statements made by Mr. Randall in his testimony?—A. As to the objects of it, I do not think they do. I have not examined with reference to that specially, but I will read you this—it is part of his testimony practically:

"The proposition which the *Crédit Industriel* makes has been submitted to you by Mr. Robert E. Randall [this is to Mr. Evarts], together with the correspondence which has passed between that gentleman and Mr. Guillaume, the chairman of the Peruvian bondholders' committee, and we request that the same be attached hereto as a part of this communication.

"The *Crédit Industriel*, you will observe, agrees to pay Chili and Peru, respectively, according to the proposition herein referred to, £550,000 per annum for a term of years to be agreed upon. This will justify a loan sufficient to cover the war indemnity demanded by Chili of £4,000,000 sterling, and leave to these respective countries sufficient to meet all legitimate national obligations. The *Crédit Industriel* agrees to obligate itself at the same time to arrange with the Peruvian bondholders the indebtedness held by them, amounting, principal and interest, to upwards of £45,000,000 sterling, without they being compelled to look to Peru, and in return, the *Crédit Industriel* simply requires that Chili shall surrender the conquered territory of Peru to Peru."

Up to that point it did not seem to concern us, but the whole kernel comes in now:

"Subject to a protectorate of the United States, guaranteeing to the *Crédit Industriel* the free and unobstructed shipment of the deposits of the said territory, to wit, the guano and nitrates, for the same term of years."

These obliging gentlemen were going to pay £550,000 sterling a year to each of the governments of Peru and Chili, in order that an adjustment might be made of the £4,000,000 indemnity, and then they were going to work out the £45,000,000 sterling,

a very respectable sum of money, for certain parties in Europe, provided that the United States would stand guarantor and indorser, and assume a protectorate over the whole of it. Why, that is the most extraordinary proposition in the world! And then there was a neat little job coiled up right there which I should not have commented on except that it comes right in my way:

"The Crédit Industriel will further agree to pay annually to the American Cable Company, between Panama and Lima, an annual appropriation of £60,000 sterling."

Just who was to get that sugar-plum I do not know, but it might be well for the committee to inquire. Now, who owned this £45,000,000 sterling?

Why, these gentlemen tell you, "the subjects of Holland, Belgium, and France"—I am reading right from their report—"represent over one-half of the bondholders of Peru, and are the customers of two-thirds of the guano and nitrate shipped to Europe, France using herself quite fifty per cent.; the balance of the bonds are held in Great Britain."

Now, there was a debt of \$225,000,000 held by the subjects and citizens of Holland, Belgium, France, and England, and they were naturally very anxious to get hold of the money. And a French corporation says, "we can work this thing out so that you can get every dollar of that. All that we want is that we shall be placed in possession of the vast resources, in Peru, in nitrates and guano, and we ask the powerful Government of the United States of America to guarantee that we shall not be disturbed there; to extend her protectorate over it, and we, under her protectorate, will work out this money for you." But where the particular financial interest of the United States came in that transaction was what Count de Montferrand could not explain to me.

By Mr. BLOUNT:

Q. Was this idea of a protectorate always presented to you by the representatives of the Crédit Industriel?—A. Yes, certainly. Mr. Randall boldly avows it in his testimony.

Q. Yes; but the matter comes up in other ways.—A. Why, it never came in any other way.

Mr. BLOUNT. The gentleman does not understand me at all. I mean to say that the question comes up to the committee from other sources before discussed. All I want to know is whether or not it always came to the State Department on the idea of a protectorate?

The WITNESS. I never heard it in any other way suggested; that is the only way.

By the CHAIRMAN:

Q. I think I understood you to say that this paper was before you at the interview, and was, in substance, the proposition that Count de Montferrand presented?—A. Why, it is *the* proposition. He says, "The proposition which the Crédit Industriel makes has been submitted to you," &c. Now it goes on—I am reading from their identical paper, which was filed in the State Department on the 21st of January, 1881, less than sixty days before I became Secretary of State.

Q. This paper was before you at that time?—A. This paper was the basis of the interview between Count de Montferrand and myself, and I told him that the United States could not touch it, or think of touching it, and I utterly rejected it.

By Mr. DUNNELL:

Q. Was that paper in the State Department, before Mr. Evarts, when he wrote this letter to these gentlemen?—A. I will observe, in answer to that question, that I think I ought not to be asked to give any testimony, whatever, in regard to Mr. Evarts.

Q. I only ask the date of the document?—A. The documents are all here. I ought to be excused from testifying about any other Secretary of State's proceedings.

Q. I only asked the question so as to obtain information as to whether it was dated subsequent to the filing of that paper that is here.—A. I think you will find it in the correspondence. That is the proposition of the Crédit Industriel; and how any American citizen, with any sort of decent regard to the interests of the United States, could for one moment think of putting this government in the attitude of guarantor, is, I think, very extraordinary. It was the doctrine of a protectorate (which the State Department under my administration always rejected) over these South American States for the benefit of four European countries to recover \$225,000,000, and that is a diplomacy which I was never able to comprehend, and which I peremptorily rejected. I never had a conversation with Mr. Robert E. Randall that, by intimation, or insinuation, or any kind of hint or innuendo, even approached the confines of approving it. Why should I deny it to Mr. Suarez and Count de Montferrand, who were the principals, and talk in a different tone to Mr. Randall, who was the attorney? Mr. Randall was a man of very inferior importance in this matter. These two Frenchmen were the French representatives of the Crédit Industriel, and they had employed Mr. Randall

merely as an attorney here. Mr. Randall was not the man that I would have confided important developments to in this matter at all, in any way.

The CHAIRMAN. When you pass from that interview, and have submitted your statement of it, I desire to call your attention to certain passages in Mr. Randall's testimony, specifically. I am not aware whether you have said all that you desire in regard to this interview.

The WITNESS. Right here I might as well state that I saw Mr. Randall's testimony, and some of it seemed to be so extraordinary, that on the 12th of May I addressed the following letter, which will explain itself, to Mr. Phillips, the private secretary of the President:

"12 May, 1882.

"DEAR SIR: In the report of the testimony of Mr. Robert E. Randall, given before a Congressional committee in New York yesterday, I find the following:" [This is extracted from the New York papers; I took this report from the Associated Press reports at that time.]

"Mr. BELMONT. You were firmly convinced that the plan of the *Crédit Industriel* was in accord with the Department?" [Meaning the State Department, of course.]

"Mr. RANDALL. Yes, sir. At the interviews of November 30 and December 1, Mr. Blaine informed me that he had submitted all the papers in this matter to President Arthur, who approved what had been done."

"I have no recollection of mentioning the *Crédit Industriel* to the President at any time, and I certainly never submitted any papers to him on the subject. As no action was proposed by the State Department in regard to the *Crédit Industriel*, the President's directions were not asked.

"Will you do me the favor to ascertain and advise me whether the recollection of the President in this matter accords with my own.

"Very respectfully,

"JAMES G. BLAINE."

"Mr. PHILLIPS."

To which I received instant answer by a messenger, as follows;

"EXECUTIVE MANSION,
"Washington, May 12, 1882.

"MY DEAR SIR: Your note of this date, addressed to me, regarding certain testimony of Mr. Robert E. Randall, given before a Congressional committee in New York yesterday, has been brought to the attention of the President, and he directs me to say, in response, that his recollection of the matter accords entirely with your own.

"Very truly yours,

"FRED. J. PHILLIPS,
"Private Secretary.

"The Hon. JAMES G. BLAINE,
Washington, D. C."

The CHAIRMAN. Now, if you will allow me to call your attention to the official testimony in the order in which it was given, you will observe that Mr. Randall testifies, on page 326 of the printed testimony, as follows:

"I saw Mr. Blaine immediately on his going into office. I saw him after his confirmation by the Senate. He stated that he had received my papers in reference to the affair, and had perused them with great satisfaction. I was very much gratified to find that he evidently had not only looked into the proposition which we were willing to make to Peru under the auspices of the United States Government, but I found also that he was thoroughly acquainted with the troubles between Chili and Peru and Bolivia, and understood the subject thoroughly."

Now, have you any recollection of that interview? If so, when and where did it take place?—A. The only part of that testimony which I would at all agree to is the last part, where he says he thought I understood the subject.

Q. You have no recollection of the interview?—A. Not the slightest in the world. Mr. Randall—I want to interpolate there—although I have been on very friendly, and even on intimate, terms, from very long association, with his brother, was a stranger to me, and I never saw him until he sought my acquaintance in the ante-room of the Senate chamber, in February, 1881. I think he brought a note from some one introducing him, but possibly only his card, for he would know that I would know who he was; and then I declined to discuss the matter. How long afterwards he saw me I do not know. I said awhile ago it was after the Montferrand interview. He might possibly have seen me in some casual way, and I would guard my own testimony on that point. But the only conversation—the only special one that I remember—was prior

to his going to Europe, which must have been some time in the summer—I think, possibly in June, but I will not pretend to locate it. I did not regard it as of the slightest importance, and I want here to put in a word of explanation. I do not want to be understood as accusing Mr. Randall of untruth. I know nothing of him that would justify that accusation, not in the remotest degree; but I think he may have got the impression (he has a thoroughly erroneous impression) from my talking to him in exactly the same mode that I embodied in writing, if you will permit me to refer to it, in one of my dispatches.

The CHAIRMAN. If Mr. Blaine will allow me, I will make this preliminary examination very brief, and I think these general statements will come in more properly after I have propounded these questions. All the committee desires is to test the recollection of the two witnesses. Mr. Randall testifies again, on the same page, as follows:

“Mr. Blaine subsequently stated to me that the propositions I made were entirely satisfactory, in his own opinion; that he considered them feasible in every way, and, as I understood him, that the United States would carry them out, so far as it was proper, in their negotiations in South America; that is, they would utilize the programme.”

What reply do you desire to make to that?—A. I never had any such conversation, or said anything out of which it could be manufactured except in the imagination of the witness.

Q. He says again:

“At that, or at a subsequent interview, we discussed who should be sent as minister to Peru; he [referring to Mr. Blaine] asked me if I had any opinion on that subject as to who should be a proper person. This was after we had discussed the programme. I remember suggesting to him Mr. William E. Chandler. I don’t know whether it was at that interview or subsequently that he said ‘Would it be satisfactory to your friends if we sent General Hurlbut?’”

A. It is very extraordinary how differently an interview can be stated. He came to the department one day and asked me who was going to be sent to Peru. I hesitated a little. It was not a matter of very great consequence to keep private, either. He then urged or suggested Mr. William E. Chandler. I told him that Mr. Chandler would not go to Peru, and then said to him, “The President I think will send General Hurlbut there.” I think this was within two or three days of the nomination. But the idea of my asking him whether General Hurlbut’s appointment would be satisfactory to the Credit Industriel is a very novel one.

Q. Mr. Randall further testifies:

“I afterwards understood, or saw by the papers, that General Hurlbut was nominated for the position. He informed me, after the appointment of General Hurlbut, that the instructions which he had given to General Hurlbut were in accord with my views and my plans, and would be satisfactory to my clients.”

A. I never had any conversation of any kind with him in my life about the instructions to General Hurlbut or anything of that sort; never.

Q. Mr. Randall is then questioned:

“Q. These are the instructions of June 15?—A. Of June 15, to General Hurlbut. I then stated to him that I thought I would go to Europe, and he approved of it”—referring to yourself.

The WITNESS. Does he state that he saw the instructions to General Hurlbut?

The CHAIRMAN. No; he is asked, referring to the last extract:

“Q. These are the instructions of June 15?—A. Of June 15, to General Hurlbut. I then stated to him that I thought I would go to Europe, and he approved of it.”

The WITNESS. He approved of it? What in the world had I to do with his going to Europe?

The CHAIRMAN. He continues:

“My object, I think, I expressed was to personally explain to my clients the status of the then administration as to their programme, and while there I concluded the contract of Morton, Bliss & Co., but that would have been done anyhow.”

The WITNESS. Does he intimate that I heard that he was going to Morton, Bliss & Co., or knew that he was going to them?

The CHAIRMAN. No; he says you approved of his going to Europe.

The WITNESS. I do not remember anything about his going to Europe, and had no conversation with him about it whatever, not the remotest in the world.

Q. Did you communicate these instructions of General Hurlbut’s to Mr. Randall?—

A. Never; I never spoke to him about them, and never referred to them.

Q. He continues:

“I went to Europe the 9th of July with a view of informing, as I stated, my clients personally of all that had transpired in the United States for the purpose of communicating that which I felt a hesitancy in putting in writing—that which I may say I knew to be the instructions to General Hurlbut, though I had never seen them. Mr. Blaine had communicated to me the substance, and I knew what they were.”

A. I do not remember ever having the slightest conversation with him about it at all.

Q. Then, after stating when he returned from Europe, he says, "I did not go to Washington on my first return, as I had nothing to communicate, and presumed everything was satisfactory; my own business and health kept me here in New York and Philadelphia with my family, and I did not go to Washington in the first instance, and not until I received a letter from Mr. Elmore, the Peruvian minister, saying he had seen Mr. Blaine on two occasions, and that he had inquired why I had not come to see him. I then went to Washington on the 22d or 23d of November. I was there the 23d or 24th. I think I saw him the first day, though I may have not; it may have been the second day. I then communicated to him all that had transpired abroad in reference to this matter. Except probably I did not speak relative to the Morton, Bliss & Co.'s contract. We had some conversation generally. I visited Washington—I have the dates—on the 26th to the 28th November; on the 30th of November and 1st of December, and on the 9th to the 11th of December, and on all these visits had the pleasure of seeing the Secretary of State." Do you remember these interviews?—A. I remember his calling several times. I do not remember asking Mr. Elmore about seeing him in any other way than to make some polite request about his traveling companion. He told me he had been over in Europe with Mr. Randall, and I asked him if he was in Washington. I do not remember any interview at all more than the most casual form of every day politeness. I never had any interview with him of any consequence at all.

Q. Mr. Randall also states in his testimony, "I would state that on the 27th of November I saw Mr. Blaine, and at that interview he stated to me, or on my visit at the time between the 30th of November and the 2d of December, that he had submitted all the papers of the entire affair in reference to securing peace to President Arthur, and had had a full conference with him, and the President approved of what had been done, but that owing to the fact that General Hurlbut had got into a controversy in consequence of the Lynch manifesto which had been published some months before, he thought that it would be impossible for General Hurlbut to carry out the policy."—A. Well, I have read you the President's letter as my answer to that.

Q. "At that interview he again intimated, or treated as settled, what Mr. Trescot's instructions would be in carrying out the Crédit Industriel programme, with the exception that the Crédit Industriel was not spoken of in them."—A. Yes; that is, I had given very elaborate instructions in regard to the Crédit Industriel, only I had not mentioned the subject. Just read that over again, please.

The CHAIRMAN [reading]. "At that interview he again intimated, or treated as settled, what Mr. Trescot's instructions would be in carrying out the Crédit Industriel programme, with the exception that the Crédit Industriel was not spoken of in them."

The WITNESS. Well, I think that is a very rare kind of a statement.

The CHAIRMAN [reading]. "If I had read them at the time I certainly should have indorsed them, for the instructions of Mr. Blaine to Mr. Trescot I do not think could have been stronger, or that I myself could have drawn them stronger."

The WITNESS. Only that the subject was not mentioned. That is a very odd statement, Mr. Chairman. I should like to have you read that over again, that extract.

The CHAIRMAN. I shall have to ask to be excused.

The WITNESS. That is extraordinary. That is, I had given just the kind of instructions in regard to the Crédit Industriel that he desired, only I had not mentioned the subject.

The CHAIRMAN. I will refer to one or two other extracts from his testimony. On page 329 of the testimony before the committee, Mr. Belmont asks this question:

"Q. I asked yesterday a question about the understanding of Mr. Trescot's mission. You have already stated that you understood that he would use his influence for the carrying out of this proposition; that is, that peace should be made on the terms that the territory of Tarapaca should be retained by Peru. Now, that is all you wanted, and further, that the Calderon government should be upheld.—A. That is all, and that the Calderon government should be upheld."

Then on page 330 he is asked:

"Q. Then, did you understand in your last interview with Mr. Blaine that your plan was to be carried out?—A. At the first interview with Mr. Blaine I laid before him our programme, also the papers, and likewise communicated to him the substance of the interviews I had with Mr. Evarts. I discussed the whole subject with him; I found, as I have already stated, Mr. Blaine perfectly at home on the subject; I saw that he was gratified and pleased that we were in a position to tender our offices to Peru, and I understood him that he thought there was no reason why the United States should not accept the protectorate over this territory. At no subsequent interviews did he give me the slightest reason to presume he had changed his plans or views. My last interview was on the 10th or 11th of December, 1881."

The WITNESS. That all refers to Mr. Trescot's mission. I was about to read from a dispatch of mine when you very properly interrupted me, and put these questions to

me. The only thing that I can base Mr. Randall's misapprehensions upon is that I may have had some conversation with him which in effect was the same as my expressions touching the *Crédit Industriel* in my dispatch to Minister Hurlbut of November 19, which has been frequently read here, but which I will read again, as follows:

"On the 27th ultimo I sent you the following telegram: 'Influence of your position must not be used in aid of *Crédit Industriel* or any other financial or speculating association.' On the 2d instant I received your reply in these words: 'It has not been; it will not be.' My reason for telegraphing you was the continual circulation of rumors that the aid of your legation was earnestly desired to promote the interest of the '*Crédit Industriel* of France,' an association which is making efforts to reorganize the finances of Peru. Agents of the *Crédit Industriel* had visited the Department of State and ineffectually endeavored to enlist the interest of this government in their behalf. However trustworthy the *Crédit Industriel* may be, I did not consider it proper for the department to have anything whatever to do with it. It is a foreign corporation, responsible to French law, and must seek its patronage and protection from France. At the same time it is no part of your duty to interfere with its negotiations with the Peruvian Government. If it can be made [that is what I always said: if it could have been made] an effective instrumentality to aid that unhappy country in its prostrate and helpless condition it would be ungenerous and unjust to obstruct its operations. Your duty is negative, and you will have fully complied with your instruction by simply abstaining from all connection with the association."

I said to Count de Montferrand that if he could do anything down there in the way of relieving the situation that the United States would be very glad to have it done. He then asked me, "Then why not accept our proposition?" I argued it with him very elaborately, much more so than Mr. Hitt put forth or even than I could put forth here. I said, suppose I approve your object and wish you success, and you go down there and immediately begin a course of action which is very distasteful to this government, what control have I over you? You are not responsible to American law; you are not an American corporation, and we have no control over you at all. And then I related a little anecdote to him, to illustrate what I had said, which brings it very freshly back to me. I told him I remembered very well when Mr. Stanton took all the telegraph lines under military control he appointed Mr. E. S. Sanford military superintendent of telegraphs, and when he came over to get his instructions Mr. Stanton handed him the commission of assistant adjutant general with the rank of colonel; and he said, "No, I don't want that, there is no need of it." But Mr. Stanton said, "I want you to have it, because if you don't behave properly I want you where I can court-martial you and shoot you." I said to Count de Montferrand, "If you have this I want you to have it under circumstances where I can bring you under court-martial, though I do not propose to shoot you;" and I illustrated it by that anecdote. In other words, the United States was asked to go out in the dark and father a French corporation and take all the chances of its behaving right, while we had no pledge of any kind. We could not forfeit their property or discipline their agents, or do anything. Why the whole proposition was so utterly absurd that I cannot understand how any man of the least intelligence in the world could stand upon it for a moment. That was not in the least degree inconsistent with our wishing that they might be able to bring about an adjustment between Chili and Peru. We heartily wished that. It was not inconsistent with the belief that the *Crédit Industriel* was a very respectable organization, as I then believed. But I said this is a French organization, and we have no more power over it than we have over the Bank of England. Suppose we should indorse the credit of the Bank of England or the Bank of France in any transaction they might enter into in South America, and they did something very distasteful and very disgraceful and dishonorable, what power have we over the governors of the Bank of England or over the directors of the Bank of France?

Q. Then, as I understand, you desire to be specific in your statement that during your service as Secretary of State you neither encouraged, accepted, or in any way countenanced the proposition of Count de Montferrand or of Mr. Randall with reference to the *Crédit Industriel*?—A. Why certainly, Mr. Chairman, and my dispatches show it all the way through.

Q. Was the matter taken into consideration in any wise in framing your instructions to Minister Hurlbut?—A. If you will take my instructions of June 15, and my testimony when I was on the stand before, you will find the matter fully explained.

Q. One question further: Was it taken into account in framing the instructions to Mr. Trescot?—A. Never in the least; never. I was always opposed to every form of guarantee or protectorate of the *Crédit Industriel*. Seeing that in Mr. Randall's testimony yesterday, I addressed this note to Mr. Trescot:

WASHINGTON, D. C., June 12, 1882.

DEAR SIR: In the testimony of Mr. Robert E. Randall, before the House Committee of Foreign Affairs, I find the following:

"Q. When was your last interview with Mr. Blaine?—A. I should think somewhere about the 10th of December.

"Q. Did you understand then that the department was considering your plan favorably?—A. I never understood anything otherwise at any time.

"Q. Did you understand that Mr. Trescot would carry out the plans of your company?—A. Yes, sir."

Will you oblige me by stating whether you found in my instructions to you any reference to the *Crédit Industriel* of France? You will oblige me further by stating whether in any conversation I ever intimated to you that you were expected to take any action whatever touching the *Crédit Industriel* during your mission in South America.

I venture still further to ask whether you understood my closing instruction to you of December 16, as requiring that you should insist on the settlement of the Landreau claim as a condition of peace between Peru and Chili.

You will please observe that I limit my inquiries to those dispatches which have been made public by official authority. I have no right to go beyond, and I trust you will find no official or personal impropriety in answering questions within those limits.

Very sincerely,

JAMES G. BLAINE.

Hon. WM. HENRY TRESCOT,
&c., &c., &c.

In reply to that letter I received from Mr. Trescot last evening the following:

WASHINGTON, D. C., *June 12, 1882.*

Hon. JAMES G. BLAINE:

DEAR SIR: I beg to acknowledge the receipt of your letter in which, after asking certain questions to which I shall more particularly refer, you say in conclusion: "You will please observe that I limit my inquiries to those dispatches which have been made public by official authority. I have no right to go beyond, and I trust you will find no official or personal impropriety in answering questions within those limits."

While I have no right, in my opinion, to answer any questions in reference to my recent mission, except to those whom I officially represented, I certainly recognize the obligation to state fully to you, from whom, as Secretary of State, I received my first instructions, any facts or impressions connected with those instructions, or the verbal communications which accompanied them. You ask first whether I found any reference in my instructions to the *Crédit Industriel* of France?

In your instruction to me of December 1, 1881, I found the following paragraph:

"If negotiation be assured, the ability of Peru to furnish the indemnity will be a matter of direct interest. Upon this subject we have no information upon which definite instructions can now be based. While you will carefully abstain from any interposition in this connection, you will examine and report to this department promptly any plans which may be suggested."

You never gave to me verbally any other or different instruction than is contained in the foregoing paragraph. Under this instruction, taken in connection with the instructions to General Hurlbut, of November 19 [which I have just read], I would have felt at liberty to urge upon the Government of Chili the acceptance of any reasonable arrangement of any financial agency, including the *Crédit Industriel*, which promised to furnish the indemnity, provided such plan involved no responsibility or guarantee or protectorate on the part of the United States. [That is a very prudent position.] If it involved such results I had no discretion and would have been confined to a prompt reference of any plan proposed to the department for consideration and decision. The negotiation never reached the point where any plan for the payment of a war indemnity by Peru could be suggested or discussed. Indeed the proposal in advance of any plan which seemed to secure the payment of such indemnity would have been a serious obstacle to the negotiation, as Chili did not want the indemnity but did want the territory.

As to the Landreau claim, your instructions never authorized me to do more than use the good offices of the United States to obtain, before a proper tribunal, a fair hearing for such rights as Landreau "might be found to possess."

I was specially instructed, in your dispatch of December 16, to disabuse the mind of the Chilean Government of the impression that any other form of intervention was intended by the Government of the United States.

As matter of fact, the Landreau claim was never in any way presented by me to the government of either Peru or Chili, nor, as I understand, was it ever named by General Hurlbut. Your instructions gave ample discretion, and the time never came when, in my opinion, its presentation would have been judicious or useful.

Very respectfully and truly,

WM. HENRY TRESCOT.

I think that is the most competent authority on these questions that the United States holds to-day.

The CHAIRMAN. I have no further questions to put. Does any other member of the committee desire to put any questions to the witness?

Mr. BLOUNT. I would like to ask Mr. Blaine a question: Do you know of any connection of Mr. Morton with the *Crédit Industriel* at all?

A. No, sir; I never knew anything at all about it, until it came out in the public prints; I never heard of it in any way whatever.

Q. There was no communication with you in regard to it, except what has been already published, was there?—A. Not the remotest; never heard of it until I was out of office. The matter then came out in the public prints which I read. I had seen nothing of it before. I saw nothing at all in Mr. Morton's conduct as minister to France while I was Secretary of State that was not very honorable, and very zealous and very earnest in support of the interests of his government.

Q. Does the published correspondence furnish all that you know of him in connection with South American affairs?—A. In regard to the connection of the firm of Morton, Bliss & Co. with the *Crédit Industriel*, or with any contract in regard to them, I never heard anything whatever until I was out of office. I literally know nothing. My testimony upon that point is absolutely of no value at all. I know nothing of it except as I have read it in the newspapers.

Q. Then all the knowledge you have of Mr. Morton's relations in reference to South American affairs is contained in the published dispatches?—A. Altogether, except as to one matter, that he wrote a letter to President Grévy in regard to the proposed joint intervention which I declined on the 6th of September. That was all. But that did not make any reference whatever to the *Crédit Industriel*.

By the CHAIRMAN:

Q. There is one question I desire to ask you. Did you have any interview or correspondence with Mr. Suarez about the *Crédit Industriel*?—A. I am very glad that you gave me that suggestion. Mr. Suarez is a man of very great ability; a man with whom I had many conversations, because he was a very persistent man, and he addressed a great many communications to the department. Like the Count de Montferrand, he was very anxious to get an answer from the department. The Count de Montferrand wanted to get something from me to show that he had been there. I declined to give him any writing to show that he had ever been at the department. I also declined to give Mr. Suarez any, and on the 6th of December, just before I went out of office, he wrote me a letter (which seems to have been received December 16, according to the notation of the department, although dated December 5), in which he says:

"I beg you, before you leave the department of Foreign Affairs, to have the kindness of sending to me an answer, in writing, to the papers I have had the honor to address to your department on the Chili-Peruvian question."

I desire to state here that I never wrote to a human being in reference to the *Crédit Industriel* except to the ministers of the United States. Nobody ever got from me the scraping of a pen. Mr. Suarez and Count de Montferrand were very anxious to get something to show that they had been in negotiation with the department under my Secretaryship, and they have not got it. They never had anything from me of any sort or kind, not even so much as a note acknowledging the receipt of their documents.

By Mr. BLOUNT:

Q. Your idea was that they wanted to use it to further their own plans?—A. My idea was this: They were perfectly frank—and I am not in the least degree charging anything dishonorable upon them; on the contrary, I think their association is one of great strength and character—they were perfectly frank in wanting the great power of the United States behind them to pull the chestnuts out of the fire for the benefit of England, France, Holland, and Belgium; and the United States, so far as I had any power in administering its government, did not propose to use its power in that way.

Q. I did not understand that the communication you speak of went that far, but was intended simply to show that they were in correspondence with you.—A. Yes; that they were in correspondence with the department.

Q. And to show to that extent their consequence in South America?—A. Yes; and I declined to do that. I never acknowledged the receipt of a paper from them in any form. But Mr. Randall's testimony goes to show that I had been in very intimate communication with them, and had suddenly turned a corner in regard to it; but I never had, from the beginning to the end. Count de Montferrand was there very early in my administration of the department—in April, these gentlemen say, and I have no doubt that is correct. I know it was very early, and then and there I laid down the rule I should pursue, and that was of having absolutely nothing whatever to do with the matter. If it had been a corporation under the power of the United

States, it might have been different, and that would have been a matter for some consideration. But that never came up; that was a question that was never born.

By Mr. RICE:

Q. You have spoken of what passed between you and Count de Montferrand, relating to an American protectorate over Peru. Did you ever suggest definitely to any one else, while Secretary of State, the idea of this government assuming a protectorate over Peru or any of the South American States?—A. Oh, never. I always rejected the idea. I always regarded it as a perfectly wild idea—perfectly wild. I never entertained the notion. There was some reference to it, I think (although that is so shadowy in my mind that I ought not to give it as testimony), in some letters of Mr. Christiancy, but it never had any lodgment in the department at all, and, in my judgment, it would have been a very extraordinary blunder on the part of the United States to assume it. That is not what I desired in connection with South American matters at all. I desired that the United States should have the honor, and the influence growing out of it, of closing that controversy.

Q. Did you ever make the retention of Tarapaca by Peru an absolute essential to any favorable consideration, so far as the United States saw fit to consider it, of the question of peace between them?—A. On the contrary, my dispatches show that I put it the other way; that I said that the loss of territory might have to be submitted to. I was reluctant to have it accomplished, but I saw that it might come to that, and Mr. Trescott went to South America, and his instructions plainly show that, with the prospect ahead of him, that might become a necessity. I think that it is a matter which will become more and more demonstrated, that had not Mr. Trescott's instructions been rescinded peace would long ago have been made between Peru and Chili, and probably with the cession of Tarapaca. I think very probably that might have been a compulsory result—a result to be deplored, but still, like the law of war, which is the law of force, it might have to be submitted to. I think that probably would have been the result, but that is in the domain of speculation, as to what might have been.

Q. Was any intervention by the United States between the parties contemplated—anything more than the exercise of those kind offices which one nation is in the habit of exercising towards another?—A. Oh, no; and nothing but what the United States will be compelled to do hereafter. Either the United States will have to intervene between those countries or else it will have to admit European countries to do it. They will never come to a peace except on the pressure of outside power. They would have had peace, in my judgment, long ago had the pressure of that power not been withdrawn; and the pressure of that power will have to be applied anew before peace will come. And if the United States decline to apply it they cannot make any objections whatever to England, or France, or any other European combination applying it. I think it will to be demonstrated in the very near future that the United States will have to assume a much more decided tone in South America than the one which I took and which was rescinded, or else it will have to back out of it, and say that is a domain that does not belong to us, and we surrender it to Europe. Because the United States is almost big enough to do anything except to play dog-in-the-manger. The United States cannot say, "We will not intervene, and we will not permit anybody else to intervene." The United States has to settle this matter itself or permit some other power to do it. You cannot before the world, you cannot before your own conscience, you cannot before public opinion of mankind, put the United States in the attitude of saying, "We will not permit any intervention in this unhappy controversy in South America on our own part; we will not make any ourselves, and we will not allow any other power to intervene." We cannot stand that at all. And that is just where we are to-day. We are just now on that narrow edge where we must take up the line where we withdrew from it, or we must allow England to come in and settle it.

When I was here before, Mr. Chairman, I said something about which I have received letters from abroad, both from English friends and American friends resident in England, deploring some statement I made here about the intervention of England. And possibly the language I used might have the interpretation that I meant the English Government's interfering as a government. That I did not mean to say. I did not mean that the English cabinet interfered, but I meant to say that it was English influence that interfered. I do mean to say, however, and you have the document before you to prove the fact, that the English minister to Peru, Sir Spencer St. John, did that which ought to have cost him his place as a man of honor, and he did it against the United States. That is a very serious charge, and yet I make it deliberately. I will tell you what he did. When Mr. Hurlbut made his agreement for certain rights in the Bay of Chimbote (which were very trivial, really; the rights which he gained, if you have ever looked at the correspondence, were very trivial) the only objection to the negotiation was the ill time of it. While he was engaged in that matter Sir Spencer St. John showed around in Lima to all of the legations a

forged copy of a treaty—I call it forged, because I call it by the right name—a simulated treaty, saying that “this is the treaty which Peru has made with the American minister, Mr. Hurlbut”; and that was telegraphed to Chili as the one, and aided very largely in creating the exasperated condition of feeling exhibited by the Chilian Government. Finally, when Mr. Hurlbut addressed him a note inquiring into it, he said, oh, that was only a little joke which he was playing; a circumstance which General Hurlbut properly characterized as a very frivolous and indecent mode of getting out of a dishonorable transaction. I do not know whether our government has advised the British Government of the action of Sir Spencer St. John in that case, but I do know that any American minister who should have done that thing towards England in any country on the globe would have been instantly recalled in disgrace by any American administration that ever held power; and if Great Britain permits that to be done by Sir Spencer St. John without a reprimand, she permits that to be done in her diplomatic service which the honor of the United States would scorn to permit in her own. That is my explanation of what I said in regard to English intervention.

The CHAIRMAN. I dislike to interrupt you, Mr. Blaine, but the hour for the meeting of the House has passed. Is there any further statement you desire to make?

The WITNESS. I think I am pretty nearly through all that I desire to say. When I was last before the committee I made a little slip of the tongue, and I want to correct it now. I have not taken occasion to correct it before, because I thought the proper place to correct it was where I made it. I spoke in connection with some testimony here of “the dirty Democratic press.” I meant to say “the dirty portion of the Democratic press,” because a large portion of the Democratic press, so far as this question is concerned, has been in the very front rank of patriotic expression. If I had said “the dirty portion of the Democratic press and the dirty portion of the Republican press,” I would have exactly expressed my meaning, and I desire to put that on record.

The CHAIRMAN. I think the committee will discriminate very closely in regard to that.

The WITNESS. Mr. Chairman, I would like to repeat, if you will permit me, what I said upon the last day that I was here before you. I will read what I then said:

“I want to repeat, in conclusion, that as I offered myself in perfect good faith for any and every question that could possibly be propounded to me in connection with this investigation in all its length and breadth, its height and depth, its collaterals and contingencies, I am still subject to the wishes of the committee. I have nothing to withhold. I court the most careful and searching investigation into these matters, not only through questions that the committee may desire to put to me, but through questions that any and every citizen of the United States may desire to ask through members of the committee. If there is any chapter in my life (associated with a great man who has gone) of which I am proud, and of the complete and absolute vindication of which in history I feel sure, it is that in connection with the policy laid down by the administration of President Garfield with respect to the South American states.”

I want to repeat and to emphasize that expression, and I want it understood by this committee that I do not desire to leave its presence to-day, or hereafter, until every possible question that any honorable member of it wishes to ask me has been asked and answered.

The CHAIRMAN. Are there any further questions? Mr. Belmont, have you any questions?

Mr. BELMONT. Certainly not.

Mr. BLOUNT. I think we had better adjourn.

The CHAIRMAN. We will conclude Mr. Blaine's examination, then, and adjourn the hearing until to-morrow.

Mr. WILSON. Just one question before we adjourn. I would like to ask Mr. Blaine as to the ability of this government now to secure a proper adjustment and settlement between the Governments of Chili and Peru. Is it too late for the United States Government now to interfere?

The WITNESS. No, sir; it is not.

Q. How, in your opinion, can that be brought about?—A. You could hardly consider that to be testimony. I have declined to speak in regard to the policy of Mr. Evarts, and it is not for me to suggest a policy to Mr. Frelinghuysen. I believe that the policy of intervention, and of good offices which were offered by the Government of the United States, and which the special mission of Mr. Trescot carried, would have been before this successful. I am very sure that if the committee desires to go to the very bottom of this matter and to get all that there is of it, and all that can be had of it, the witness is in town. It is the Hon. William Henry Trescot, a gentleman whom I consider more highly skilled in diplomacy than any other citizen of the United States, who is a man of entire integrity, of great frankness of character, and who, I presume, will be at the service of the committee.

The CHAIRMAN. It is the purpose of the committee to examine Mr. Trescot. The committee will stand adjourned until to-morrow.

Adjourned.

WASHINGTON, D. C., *June 14, 1882.*

The committee met, pursuant to adjournment.

Hon. WILLIAM HENRY TRESKOT appeared and was duly sworn.

By the CHAIRMAN:

Question. Please state to the committee to what countries in South America you were sent as a representative of the United States and of the State Department.—Answer. I was sent on a special mission to Chili, Peru, and Bolivia, each of those countries having a regularly appointed United States minister at the time of my mission.

Q. Please describe the character of your mission briefly.—A. I do not know that I can describe the character of the mission without a discussion of the instructions under which I went. I went there as special envoy extraordinary and minister plenipotentiary to these three republics of Chili, Peru, and Bolivia. The mission was a general one. I took letters of credence to the presidents of the three republics, with instructions to this extent, to see all three, and of course you know the object of my mission was to bring together the belligerents and see if it was possible to arrange a peace between them.

Q. When did you receive your appointment?—A. I think it was early in November. I do not recollect the exact date, but my commission was issued by the President before the meeting of Congress, and immediately upon the meeting of Congress the nomination was submitted to the Senate and confirmed, and a new commission sent to me, which reached me before I had commenced any action under it.

Q. Please state, in that connection, who was Secretary of State at that time?—A. Mr. Blaine was Secretary of State at the time of my appointment, and I think Mr. Frelinghuysen was Secretary at the time of my confirmation by the Senate, although I am not certain about that. I could tell by looking at the commissions; I do not recollect at this moment.

Q. At the time, or about the time, of your appointment were you engaged in or about the Department of State?—A. I had no official relation with the Department of State at the time of my appointment.

Q. Will you please state whether you were at the Department examining any portion of the records and papers at that time, or whether you were conversant with them.—A. My relations with the Department of State had existed for some time in consequence of the following state of facts: When I returned from Halifax, at which place I had been counsel for the United States, there was a great deal of matter relating to the fishery commission and the action which the government proposed to take under it, which required an examination of papers, the preparation of a report, &c., and for some time afterward the commission was still held open, and I remained at the Department of State preparing such papers as were necessary for the information of the Secretary. And the same thing happened on my return from China—the commission remained open until the ratification of the treaty. I was at home on leave, and during that time I was obliged to attend to the same duties—the collection of information and the preparation of it for the use of the Secretary. At various times during these periods I was consulted by the Secretaries, both by Mr. Evarts and Mr. Blaine, but such consultations were, I considered, entirely private in their nature; that is, they chose to ask my advice on certain matters which they thought I understood, but there was no official relation between me and them.

Q. About the time of or preceding your appointment, had you occasion to examine papers and documents relating to this special mission?—A. Previous to my appointment, when Mr. Blaine was discussing the question whether the condition of things in Peru and Chili would not require him to send down a special minister to those countries, I was requested to, and did examine the papers with reference to the questions existing between the belligerents.

Q. Will you please look at page 741 of the document I hand you [Senate Ex. Doc. 79], which contains certain extracts taken from the official registers of the State Department? I desire to call your attention to a letter from Mr. Shipherd to Mr. Blaine, dated May 21, 1881; also, on the following page, Mr. Shipherd to Mr. Blaine, May 25, 1881; Mr. Shipherd to Mr. Blaine, May 31, 1881; Mr. Shipherd to Mr. Blaine, June 4, 1881; and Mr. Shipherd to Mr. Blaine, June 21, 1881, which letters are said to be missing from the files of the Department of State. Will you please examine these memoranda and state whether you have any knowledge in regard to these lost papers, and if so, what?—A. I can answer that question without examining the document. I know nothing about any correspondence of Mr. Shipherd with the Department. I know nothing about Mr. Shipherd. I never saw him but once in my life and that was for a very few minutes, and all I know about it is that before I left for South America, Mr. Blaine asked me if I had seen a letter from Mr. Shipherd to Mr. Hurlbut making a proposal which he thought a very improper one, and I said no, I had not, and he showed me the letter and the answer to it.

Q. When was that?—A. I cannot say. I left here on the 3d of December, and it was a

few days before that. That is the extent of my acquaintance with Mr. Shipherd, with Mr. Shipherd's claim, and with the correspondence in the matter.

Q. None of those missing papers, then, came into your possession?—A. None ever came into my hands, and I never saw them or knew what they were until I saw them here in this document.

Q. Do you know of any minister plenipotentiary of the United States who was personally interested or improperly connected with any business transaction in which the intervention of this government was requested in the affairs of Chili and Peru?—A. No, sir; I have no such knowledge.

Q. Has your attention been called to the *Crédit Industriel*?—A. Yes, sir; my attention has been called to the *Crédit Industriel* as the only means which it was supposed Peru would have to raise the indemnity, in case that she succeeded in getting Chili, by negotiation, to allow the paying of such indemnity.

Q. When on your mission to Peru and the other South American republics, did anything come to your knowledge pertaining to the relations of the late United States minister, Mr. Hurlbut, to this company, the *Crédit Industriel*?—A. Nothing at all. I never saw any reference of that sort, excepting some of the papers which came from the United States; and I think I can say, I think I ought to say, that, so far as the impression made upon me by the people immediately around me in Peru and Chili is concerned, while in Chili, there was great antagonism to General Hurlbut's course and disapprobation of what he had done. I never heard any charge made against General Hurlbut that he was governed by anything like corrupt influences in the discharge of his duties. And perhaps I ought to go further. I ought to say that the time has not yet arrived when the action of the United States minister could have been invoked for the benefit of the *Crédit Industriel*. The time has not yet come when the question could become a practical one.

Q. The committee desire you to state fully any knowledge you have on this subject, or anything you have learned touching General Hurlbut or his connection with it.—A. The only knowledge I have is this: I received, while in Santiago, a letter from General Hurlbut, in which he said that while he did not pretend to defend his course as a diplomatist—that is, his diplomatic action—and had no objection to the freest criticism or even censure upon it, he did think the personal charges made against him were doing him injury, and as they were entirely false, he thought, both on account of our old acquaintance and our respective positions, if I had an opportunity, I ought to correct these false statements. In fact he had given me, in Lima, a copy of a letter from Mr. Shipherd—an exceedingly insolent one—and shown me his reply; and, as I tell you, I had already seen the letter which Mr. Blaine had shown me from Mr. Shipherd, containing the proposition which he made to General Hurlbut. I took opportunity on one occasion, in speaking to the secretary of foreign affairs in Chili, to call his attention to the editorials in the papers reflecting on Mr. Hurlbut, and said to him that while I had nothing to say about the diplomatic relations of Mr. Hurlbut, I thought I ought to say that I had seen that much of the correspondence, and I expressed the opinion that these charges were doing Mr. Hurlbut great injustice. The secretary for foreign affairs stated that he had never said anything that would indicate that he had any charge to make against Mr. Hurlbut; which was true.

Q. Then, you learned nothing prejudicial to the personal or official character of General Hurlbut?—A. Nothing at all; absolutely nothing.

THE CHAIRMAN. I have received a communication from the Secretary of State which informs me that a large amount of correspondence between Mr. Trescot and the Department pertaining to this special mission has been or will be sent to the Senate to-day. And for that reason I have no desire myself to put any further questions to the witness this morning. If any member of the committee desires to interrogate Mr. Trescot further, he will have the opportunity.

MR. KASSON. I think the suggestion of the chairman is one we ought to adopt, and that before proceeding with the inquiry we ought to see what the correspondence referred to contains, as it is original and authentic.

MR. BELMONT. I should like to ask one or two general questions, as we have a few minutes before the House meets. I understood Mr. Trescot to say that the plan of the *Crédit Industriel* was the only one which could have brought about a settlement of these South American troubles.

THE WITNESS. It was the only one of which I heard which seemed to have behind it a sufficient financial stability, or which in practical operation would have been supported by either of the governments to whom it was made. But, then, understand me, Mr. Belmont, that was simply the plan for furnishing the money to pay the indemnity. What details of arrangement would have come up I know nothing about, for it could not have come up until we had reached a point where that proposition could have been made, until Peru and Chili had reached that point where the negotiation permitted the payment of an indemnity, and the practical detail of the payment was not made. It was only the general plan that the *Crédit Industriel* was prepared to do so and so.

Q. And the first steps, I suppose, were the retention of the territory of Tarapaca and the recognition of some government there which would carry on the negotiations?—A. I cannot say that exactly. I think, as far as I can judge, the *Crédit Industriel* was a purely financial institution, which was ready to make the same offers to Chili or Peru. It wanted the administration of the nitrates of Tarapaca, and it was willing to administer them whether the territory was Chilian or Peruvian.

Q. Previous to the instructions of June 15th, were you aware of the presence of the agents of this company here?—A. Yes; I had met the Count de Montferrand at Mr. Evarts's once or twice.

Q. And Mr. Suarez?—A. I have seen Mr. Suarez half a dozen times.

Q. And Mr. Elmore?—A. Mr. Elmore I saw as minister from Peru.

Q. He was not minister at that time, was he?—A. I cannot tell you the date of his recognition, I do not recollect that. But he was here for some time asking to be recognized. He had been in China, previously, and I had heard a good deal of him, and he came to see me here, and I had a conversation with him.

Q. Did you ever see Mr. Randall?—A. I have seen Mr. Randall. I knew Mr. Randall was interested as the representative of the *Crédit Industriel*.

Q. I mean did this all occur at the time of the giving of the instructions of June 15?

The WITNESS. Where will I find the instructions of June 15? Refer me to them.

Mr. BELMONT. I think they are on page 501 of this book [Senate Ex. Doc. No. 79].

The WITNESS. Let me see what you refer to, for I do not recollect them by that date.

Mr. BELMONT. I mean the instructions to Minister Hurlbut.

The WITNESS. I do not think I was here at the time that letter of instructions was sent. I might have been, but I do not recollect at this moment.

Q. May I ask if, since your return, you have communicated with any one upon the subject of the *Crédit Industriel*?—A. Yes; I have no objection to answering that question, although I do not think it is a question that is very properly put by a committee.

Q. I ask it because you do not remember whether you were here at the time of the giving of those instructions of June 15.

The WITNESS. What do you mean by "communication"? Do you mean whether I have had any conversation with anybody on the subject of the *Crédit Industriel*, or whether I have had any communication officially?

Mr. BELMONT. I mean whether you have had any communication by letter.

The WITNESS. Yes; I have had communication by letter. I have no hesitation in saying that. But I do not think it is a matter in which the committee is interested.

Q. Have you any objection to saying from whom?—A. None in the world.

Q. From whom?—A. Mr. Robert E. Randall called my attention to Mr. Blaine's testimony, and asked me to examine it carefully and to tell him whether my recollection bore out his view of the relations between them or Mr. Blaine's.

Q. Can you remember the substance of your reply to that?—A. Yes, I can remember the substance of it, but I really do not think that is a fair question to put to me.

Mr. BELMONT. As Mr. Randall's testimony has been contradicted, Mr. Chairman (I had no questions to ask on that subject yesterday), if Mr. Trescot has expressed any opinion in regard to the testimony of Mr. Randall—

Mr. BLOUNT. Can't you get at what you want without reference to that letter, Mr. Belmont?

Mr. BELMONT. I do not know that I can, because the instructions of June 15th on that subject are important, and Mr. Trescot does not remember whether he was here at that time.

The WITNESS. I cannot say whether I was here or not, but if you will let me look at the dispatch perhaps I can tell.

Mr. BELMONT. I would rather go back to my question in regard to the substance of the letter or the letters which you say you wrote to Mr. Randall.

The WITNESS. I do not intend, Mr. Belmont, to be drawn into a discussion as to the veracity or correctness of statements of either Mr. Randall or Mr. Blaine. I am perfectly willing to state exactly what the instructions were, and what I did under them, and how I understood them. That I have a right to state, but I have no right to talk outside of that. If Mr. Randall asked me my recollections, I gave them to him, and he has a right to them.

Q. Have you read Mr. Randall's testimony?—A. I have read his testimony, at his request.

Q. Did you find anything in that—

Mr. BLOUNT. If Mr. Belmont will allow me, I will make this suggestion to Mr. Trescot. Mr. Randall made his statement, and Mr. Blaine then asked to be heard with a view of contradicting that statement. The committee thought it was right that that should be done; and now, as I understand, Mr. Belmont is seeking to get from Mr. Trescot his recollection, with the view of seeing or ascertaining which one of these gentlemen is correct, and for the purpose of informing ourselves as to the value of the testimony of either one of these gentlemen. That is the way it seems to me.

Mr. BELMONT. I think everything in connection with the examination yesterday

would make this perfectly proper, especially as Mr. Trescot wrote a letter to the witness who appeared yesterday, on that subject.

The CHAIRMAN. I do not understand there has been any objection raised to the statement of any fact bearing upon the issue.

Mr. BLOUNT. The only idea I had in making my statement was to show Mr. Trescot that the question was not intended to put him in any unpleasant position at all.

The WITNESS. I do not think I could go any further in my statement than was contained in my letter to Mr. Blaine.

Mr. BELMONT. Could you not say what was the substance of your letters to Mr. Randall, since Mr. Randall has asked you your recollection?

The WITNESS. I will try to tell you what they are, Mr. Belmont.

Mr. KASSON. It seems to me that the witness should not be asked so much in regard to what he wrote, as in regard to the facts that occurred at the time between Mr. Randall and Mr. Blaine.

Mr. BELMONT. That was my first intention, to ask him that; but he does not remember whether he was here at that time. I understood from the clerks of the department (whether they were mistaken or not I, of course, cannot say) that the drafting of the most of these dispatches and instructions in regard to Chili and Peru was the work of Mr. Trescot.

Mr. KASSON. I do not think we have a right to go into the official matter at all; that is between the President, the Secretary, and himself. But as to the facts which occurred, which were necessarily unofficial, Mr. Randall being a participant, that is an outside matter.

The CHAIRMAN. Mr. Trescot is being examined in regard to any matter touching the facts, or his recollection in regard to the facts, and documents might be referred to by way of refreshing his recollection.

Mr. BELMONT. I do not understand that Mr. Trescot has made any objection.

The WITNESS. I have made no objection.

The CHAIRMAN. Then, the point of your question is, Mr. Belmont, to ascertain the fact, or Mr. Trescot's recollection as to what occurred between Mr. Randall and Mr. Blaine?

Mr. BELMONT. No; I am referring, really, to the relations of the department to the *Crédit Industriel*; that is all. According to some of the testimony one would suppose there were no relations; but according to Mr. Randall's testimony there were. [To the witness:] You have written letters, you say, to Mr. Randall upon this subject of the *Crédit Industriel*?—A. Yes.

Q. And of course in regard to its relations with the department?—A. Precisely.

Q. Could you give us the substance of both letters?—A. Yes, I can give them to you without any hesitation. In the first place I know nothing about what passed between Mr. Randall and Mr. Blaine. I was not present at any conversation between them, and their statements must be taken for what they are worth. What I told Mr. Randall, so far as I recollect—and if I had supposed there had been any question of that sort I would have brought the letters and had you read them; that would have been the shortest way—

Q. Have you no copies of them?—A. No. I have of one letter but not of the other. Mr. Randall was under the impression, as I inferred from his letter to me, that there had been certain relations existing between the State Department and himself in regard to the action this government would take in support of the *Crédit Industriel*. He thought that action went to a certain point, and then after that relation had been established, as he supposed, that Mr. Blaine had, in taking up the Landreau claim and forcing it upon the attention of the two governments, interfered with the proceedings of the *Crédit Industriel* to their disadvantage. That was the first point that he called to my attention. I told him that I could not see that, and I do not see it now.

Mr. BELMONT. I do not quite understand. You mean that their plans were not interfered with. Did you assure him that the plans were not interfered with?

The WITNESS. I told him that I did not see that they had been. I did not undertake to say what the relations between the Department of State and Mr. Randall were. I merely stated that, as far as I understood him to explain the plans of the *Crédit Industriel*, nothing had been done by the department which interfered with those plans. In point of fact the question has never reached a practical consideration.

Mr. BELMONT. All the steps, however, being taken to get at it?

The WITNESS. No; no steps being taken, the question could not practically come up. The *Crédit Industriel*, as I understand it, makes an offer to Peru to this effect: If you can reach a negotiation with Chili by which Chili will consent that you pay a war indemnity instead of ceding territory, we will furnish you the means to make that payment.

Q. And do you say that the *Crédit Industriel* was the only combination which could do that?—A. I thought the *Crédit Industriel*, as far as I could see in Peru and Chili, was the only combination which could have effected that. There may have been others. I never heard of them; that is all.

Q. Did you or not know anything of the instructions of June 15?—A. I imagine I did know something of the instructions of June 15.

Q. Did you draft them?—A. That I do not recollect at this moment.

Mr. BLOUNT. Had we not better allow the witness to finish the statement he was making, unless he has concluded it.

The WITNESS. No, I had not finished the statement I was making.

Mr. BLOUNT. I do not wish to interfere with Mr. Belmont's examination, but I think it would be well to get the statement of the witness all together.

The WITNESS. I see the point that you mean, Mr. Belmont; you want to understand just what this paragraph of the instructions meant: "As you are aware, more than one proposition has been submitted to the consideration of this government."

Mr. BELMONT. Not at all; that is not what I meant. I meant whether you had any knowledge that Mr. Randall was aware of these instructions, or that Mr. Elmore or Mr. Suarez knew anything of the instructions to be given.

A. No; I cannot tell you what Mr. Randall or Mr. Elmore or Mr. Suarez knew about the instructions.

Q. Did you have no conferences or occasional conversations with them?

The WITNESS. What; with regard to the instructions issued by the department?

Mr. BELMONT. No; I did not say that. But did you have any conversations with them?

The WITNESS. On what subject?

Mr. BELMONT. On the subject of, in the first place, Mr. Elmore's mission here in regard to the *Crédit Industriel*.

A. I have had a good deal of conversation with Mr. Elmore on the subject of his mission here.

Q. Did you have any conversation with Mr. Suarez?—A. No further than from the fact that Mr. Suarez was with Mr. Elmore, for I never considered Mr. Suarez, the representative of Peru. But he was present very often during the conversations Mr. Elmore had with me.

Q. But did Mr. Randall have any conversation with you on the subject?—A. Yes; I had a conversation with Mr. Randall as to the plan proposed by the *Crédit Industriel*.

Q. Was that previous to the instructions of June 15, or when was it?—A. I rather imagine it was.

Q. When was it?—A. I cannot tell you the date unless I go through my correspondence and look at it. I think it was before, though my impression was it was sometime in the spring.

Q. The recognition of Mr. Elmore as special agent of Calderon was, I think, on the 4th of May?—A. I do not recollect at this moment.

Mr. BELMONT. Or his letter to the department was left on that day. His recognition may have been on the 9th; at any rate, it was between the 1st and the 10th of May. Do you remember whether at that time you had any conferences with him or Mr. Suarez?

The WITNESS. Conferences mean one thing, and conversation means another.

Mr. BELMONT. Well, conversation.

A. Oh, yes; I had conversations in plenty with him.

Q. Did he explain to you the purposes of the *Crédit Industriel*?—A. I think that both Mr. Elmore and Mr. Randall explained to me that the object of the *Crédit Industriel* was to furnish the war indemnity to Peru.

Q. Did you understand that President Calderon was in favor of that plan?—A. No, I did not; I do not think anything was said to me about it.

Q. Did you understand that he was opposed to it?—A. No; I have no recollection at all of any position on the part of President Calderon in regard to it.

Q. Did you understand that Mr. Elmore was his special agent?—A. I understand that Mr. Elmore was the special representative of Calderon as the President of the provisional government, undoubtedly.

Q. But the provisional government had not been recognized at that time.—A. Well, it must have been recognized pretty nearly about the same time.

Q. No; not until late in June.—A. The instructions went to Mr. Christiancy, and Mr. Christiancy took as one of the grounds of his recognition of the provisional government that Mr. Elmore had already been acknowledged.

Mr. BELMONT. In regard to Mr. Christiancy, I think it would be just as well to read what he said in regard to the Calderon government and the recognition of it.

The WITNESS. Oh, he said a great deal.

Mr. BELMONT. Yes; he said a great deal. [Endeavoring to find the extract.] If I could find it without losing too much time, I would do so.

Mr. KASSON. Is that pertinent?

Mr. BELMONT. I think so, for it shows what ground there was for recognizing such a government, which our minister declared to be neither a government *de facto* nor *de jure*; and the representative of what they called the provisional President was also the representative of the *Crédit Industriel*; and I understand that previous to the in-

structions which were sent to our minister he was also instructed to recognize that government. Mr. Trescot, who drafted the dispatch (if he did), had conferences with this gentleman. Now, as he also says that that was the only plan, so far as his judgment went—

The WITNESS. No; I say so far as my knowledge went.

Mr. BELMONT. Which could have been contemplated in any negotiations—

The WITNESS. No; I did not say that.

Mr. BELMONT. Very well; will you state what you did say?

The WITNESS. What I said was this—and I want you to understand that my idea, my opinion, as to the capacity of the *Crédit Industriel* depends not upon anything I have heard here, but upon all that I saw in Peru and Chili. I came to the conclusion then (I do not say that I had any opinion about it before) that the *Crédit Industriel* was the only financial agency that promised any relief to Peru in case she should have to pay a war indemnity.

Q. Did you not unders'tand that to be the case when the instructions of June 15th were sent?—A. I never heard of any other agency that was offered.

Mr. BELMONT. Exactly; that is what I stated before, that it was the only agency in contemplation.

The WITNESS. That is the only agency I ever heard of.

Q. Was that contemplated in the instructions of June 15th; this is a very important answer, I think.—A. I should say that this answered that question [reading from the letter of June 15, 1881]: "As you are aware, more than one proposition has been submitted to the consideration of this government looking to a friendly intervention by which Peru might be enabled to meet the conditions which would probably be imposed."

Mr. BELMONT. What proposition was that?

The WITNESS. I take it for granted that it was the chief one. There may have been others of which I know nothing. I suppose it was the same proposition that was made to Mr. Evarts.

Q. And that was the proposition of the *Crédit Industriel*?—A. Yes, sir; that was the *Crédit Industriel*.

Q. And therefore—now Mr. Trescott will you answer this—it was not necessary to put in the title of the company in order that the minister should understand what financial arrangement was intended?—A. That I do not know; I do not know what Minister Hurlbut's knowledge was in regard to it. I would have understood it. I could not undertake to say what Mr. Hurlbut would have understood.

Q. Do you believe he would have understood it?—A. I should think so.

Q. Why? Did he not have also some knowledge of the *Crédit Industriel* before?—A. That I do not know. I know nothing of the knowledge of Mr. Hurlbut on the subject. I never saw him before he went to Peru, or exchanged a word with him on the subject.

Q. Well, you would have supposed it unnecessary to put in the title of the company?—A. Oh, in a general dispatch like that, yes. I would not have thought of putting in the title of the company until we reached the point where there were definite plans submitted to the government.

Q. That was the plan which was understood to be—A. I cannot say that. I only say that if I drafted that dispatch, which I am inclined to think I did, on reading it—

Mr. BELMONT. Oh, you did?

The WITNESS. I cannot say until I examine it.

Mr. BELMONT. Who else could have done it?

The WITNESS. Oh, there were several dispatches written before I left—

Mr. BELMONT. But this was long before you left here?

The WITNESS. There were dispatches written that I had nothing to do with. Do you want an answer to that question? If you have the right, and the committee sustain you, I will look through my dispatches and tell you. I do not think you have the right to ask me about that. Every dispatch written by the secretary is his own, and—

Mr. BELMONT. Very well; we have but a few minutes time left. One more suggestion: Yesterday we were told that Mr. Trescot would be such a competent witness on this subject, and I should think so too, especially as he had this subject in charge, and we have understood all along that he did draft the important dispatches, and the most important, of course, were the instructions.

The WITNESS. You must understand, Mr. Belmont, that a letter signed by the Secretary of State is the Secretary of State's.

The CHAIRMAN. It is unnecessary on either side to argue the point. What is the question, Mr. Belmont?

Mr. BELMONT. I want to know if Mr. Trescot drafted that dispatch [of June 15], because, I think, in that case, he will perfectly understand it.

Mr. BLOUNT. If Mr. Belmont will allow me to say a word. I understand that Mr.

Trescot has answered that question by saying that he does not recollect, and it seems to me that that would end it for the present. If Mr. Belmont wants further information on that point the witness can answer it at a subsequent meeting, after he has had an opportunity to examine the papers.

Mr. BELMONT. I was only trying to assist Mr. Trescot's recollection.

Mr. BLOUNT. I understood the witness to say positively that he did not draft it.

Mr. BELMONT. I am waiting for Mr. Trescot to answer whether he drafted that dispatch.

The WITNESS. I am inclined to think I did, but I would not say positively without looking over the dispatches. Now, I would like to ask the committee a question. What right have I to answer a question like that? If I was asked to draft that dispatch, was it not a confidential matter between me and the Secretary? Is it not his dispatch?

Mr. BELMONT. The dispatch is a public matter now.

The WITNESS. Yes; but the writing of it is not a public matter.

Mr. BELMONT. But the explanation of it is.

The WITNESS. Then ask me to explain the facts.

Mr. BLOUNT. I would suggest that that question has not arisen yet, and it may not. Mr. Belmont may be satisfied with the statement that Mr. Trescot makes, that he does not recollect whether he wrote the draft or not. And before this other question arises, Mr. Belmont can determine whether he wants the witness to examine the dispatches, and that question may come up afterwards for the committee to decide upon.

Mr. WALKER. Is it not the dispatch of the Secretary, no matter who wrote it?

Mr. BLOUNT. I do not propose to argue the question. I think we might get rid of it in an easier way.

Mr. BELMONT. There are two conclusions to be drawn from these facts. In the first place it may be said that the *Crédit Industriel*, not being mentioned in the dispatches, was proof that there was no intention of recommending that scheme as a plan, but I want to show that that plan was intended, and no other, by that instruction, and, as I understand Mr. Trescot, he says as much. He says there was no other plan that he understood, and as he drew the instructions I think he is entitled to an opinion on that subject.

The CHAIRMAN. It seems to me that it does not require argument. I understand that is the point to which your interrogatory is directed. As the hour of adjournment has arrived, I suggest that the matter be postponed until Mr. Trescot is recalled.

The WITNESS. I would remark that a complete answer to the question (and which would save all these questions) is my letter to Mr. Blaine. It shows the whole extent of the *Crédit Industriel*.

Mr. BELMONT. In addition to the letter to Mr. Blaine, I should like the committee to ask for Mr. Trescot's letters to Mr. Randall, or copies of them.

The WITNESS. I submit that you have no right to do that; that is a thing you have no right to do.

The CHAIRMAN. The committee will decide that before Mr. Trescot is recalled.

The WITNESS. I am willing to answer any and all questions, subject, of course, to my obligations to the President and the Secretary of State, in regard to my relations to this matter, and the relations of my mission to the matter, and that is all I think you have a right to ask.

Mr. BELMONT. Mr. Randall's testimony was contradicted, and therefore Mr. Trescot's letters to Mr. Randall ought to be produced.

The WITNESS. In what respect are they better than my testimony?

Mr. BELMONT. If Mr. Trescot will state fully the substance of the letters, that will do.

The CHAIRMAN. All these questions will be considered by the committee, and Mr. Trescot will be excused until recalled.

Mr. BLOUNT. I hope Mr. Trescot will examine the papers that Mr. Belmont has inquired about, so as to save time.

The WITNESS. Which papers? And I would like to know from the committee, before I do that, whether the committee holds itself at liberty to ask me to say whether I have drafted this or that dispatch in the department.

Mr. KASSON. As the chairman has said, we will consider that in executive session.

The WITNESS. I do not think I ought to be asked that.

The CHAIRMAN. Mr. Trescot will be notified when the committee is ready to hear him again.

Adjourned.

WASHINGTON, D. C., June 20, 1882.

The committee met at 10 o'clock a. m.

Hon. WILLIAM HENRY TRECOT recalled and further examined.

By Mr. BELMONT:

Question. Is there anything you desire to say in regard to Mr. Randall's testimony which was left unsaid in your previous examination? If so, you can complete your statement.—Answer. I should have to examine my testimony before I could answer that question, to find out exactly where to begin. But before I do that let me say that, in pursuance to your request, I wrote to Mr. Randall and asked him to send me a copy of the letter which I did not have a copy of, and now I have copies of both letters here if you desire to see them. I have no earthly objection to handing the letters to you, and I am satisfied Mr. Randall has no objection to my doing so.

Mr. BELMONT. The purpose of my question was to get at the meaning of the instructions of June 15. I did not so much care to have the private correspondence between you and Mr. Randall; but I would like to know whether the plan of the *Crédit Industriel* to furnish an indemnity to Chili, and to prevent the cession of *Tarapaca*, was intended in the instructions of June 15.

The WITNESS. I should think so, unquestionably, to this extent, that those instructions were written with a knowledge that the *Crédit Industriel* had proposed some plan, or two or three plans, and that if the *Crédit Industriel* could furnish an indemnity to Peru whenever the time came that Peru was allowed to negotiate for an indemnity, that then it would be a matter of very great interest to know what she could do. As I would have understood the instructions if written to me, and as I understood the extent of my privilege in dealing with these governments there, I would, without hesitation, have urged upon Chili the adoption of any reasonable plan that the *Crédit Industriel* had offered; but if that plan had gone further and required the United States to guarantee any plan they suggested, I would have considered I could go no further, and would have been bound to submit such a plan to the department for its examination and decision. But so far as urging upon the Chilean Government, if I had an opportunity, the adoption of the offer of the *Crédit Industriel* to furnish the money to pay the indemnity, I would not have hesitated to do it; I would have urged it upon them.

Q. You understand, of course, that my question refers only to the instructions of June 15?—A. No; I did not understand that, because I could not very well take one instruction as covering all the instructions of the department. I am obliged to take the series of instructions given, and the circumstances by which I am surrounded, in order to judge of these matters.

Q. I mean the instructions to General Hurlbut of June 15, only.—A. I would have considered those instructions as a part of mine, except where modified by my own instructions from the department.

Q. Have you examined those instructions in order to be able to state whether or not you drafted them?—A. I have examined them in order to be able to state whether I drafted them; and I certainly can answer the question whether I drafted them or not. But before doing so I submit to the committee whether it is a question which I have any right to answer. The drafting of correspondence is a confidential matter in the department, and I do not think I have any right to say that I wrote this or that dispatch which is signed by the Secretary. I regard any dispatch signed by him as his dispatch.

Mr. BELMONT. That is immaterial, I think, if you will state whether you have full knowledge of the meaning of the dispatch.

The WITNESS. How can I state whether I have full knowledge of it or not? I know what I understand it to mean.

Mr. BELMONT. If you are not able to say that you are certain as to the meaning of it, then I think it would be important to know whether you drafted it.

The WITNESS. Suppose I drafted that dispatch and placed it in the hands of the Secretary. The Secretary says to me, "I want you to examine a certain subject and prepare a dispatch for me," and I do so, and hand it to him and he puts his signature to it, having read it. Now the only point is, what did he mean by it, and what did the minister to whom it was addressed understand it to mean? Suppose I should come in and say, "I meant so and so in that sentence," and the Secretary says, "I never understood it in that way; I never understood that sentence to mean that." Would you allow me to say that because I meant a certain thing when I wrote it that it bound him? Do you not see that my understanding of it has nothing to do with it? Suppose you told me to fill up a check, and I filled it up for \$500, and the question afterwards came up as to whether gold or currency was meant. My understanding of it would not make any difference; it was your signature that gave validity to the check.

Mr. BLOUNT. All these matters have been given to the public, and I do not see why there should be any delicacy in stating the facts in regard to them. This correspondence is no longer a state secret.

Mr. BELMONT. Allow me to put a question right here. (To the witness:) At that period you were not in any official relation to the department, I understand?

The WITNESS. O, you want to know if I drafted that dispatch, my relation being not an official relation?

Mr. BELMONT. I will give you the reason I have for asking the question. I understood you to say that you had had a number of conversations with representatives of the Crédit Industriel.

The WITNESS. Yes.

Mr. BELMONT. Previous to the drafting of this dispatch?

The WITNESS. Yes; that is, I understood what they wanted.

Mr. BELMONT. You understood what they wanted. Now my purpose is to discover what was the meaning of the dispatch, so far as it related to the Crédit Industriel.

The CHAIRMAN. If you will allow me, Mr. Belmont, my opinion is that the question, in the first place, is improper, and second, immaterial; that the meaning of a dispatch, like the meaning of a deed, must be drawn from the language, and that it makes no difference who did the writing of it, unless there is something ambiguous in the language which cannot be understood.

Mr. BELMONT. As the matter stands now, we do not know what the dispatch meant.

Mr. BLOUNT. I suppose, Mr. Chairman, that the idea of Mr. Belmont is to ascertain the plans and purposes of the administration with reference to these questions in South America, and that light may be thrown upon them by the paper itself or by conversations with the agents of the Crédit Industriel. I suppose that is the object of it.

Mr. BELMONT. I think Mr. Trescot understands my question perfectly.

The WITNESS. Certainly; I understand your question. You want to know whether I wrote that dispatch; or, do you refer to the other question as to what the meaning of it is?

Mr. BELMONT. What the meaning of it is; that is all I want to know.

The WITNESS. Of course I can tell you what I think its meaning is. I cannot do anything more than that. I cannot tell you its absolute meaning. Three people might read it and draw entirely different conclusions from it. I can tell you what I think it meant.

Mr. BELMONT. I should like to know very much.

The WITNESS. Have you a copy of my letter to Mr. Blaine, which was read here and which is in print?

Mr. BELMONT. Can't you make the statement without referring to that?

The WITNESS. I will try to make the statement to you. I understood by this dispatch—

The CHAIRMAN (interrupting). I think, in response to Mr. Blount's suggestion, that any surrounding facts may be given in evidence. But when you come to ask a witness to construe a dispatch, it certainly seems to me, whether he wrote it or not, it does not change the language of the dispatch, and unless there is some ambiguity about it I do not see how it needs to be construed; it construes itself. But if you desire to inquire of the witness what he knows from the surrounding circumstances and then ask his opinion, I think that is proper. But I do not think the dispatch needs any construction.

Mr. BLOUNT. I had supposed that what Mr. Belmont was trying to get at was not only the construction of that dispatch, but his purpose was to take that and other circumstances to ascertain the policy of the administration.

Mr. BELMONT. What I really want to know is if the Crédit Industriel was intended in this dispatch; that is all.

The WITNESS. I should say so, unquestionably.

Mr. BELMONT. Well, that is sufficient.

The WITNESS. I should say that when this language is used, "As you are aware, more than one proposition has been submitted to the consideration of this government looking to a friendly intervention by which Peru might be enabled to meet the conditions which would probably be imposed," that that refers either, among other things, or entirely, to the Crédit Industriel, and the plan which it proposed to furnish indemnity to Peru.

Mr. BELMONT. That is the whole point of my inquiry. I am perfectly satisfied with the answer.

The WITNESS. That is all that I can say. I have no doubt about that.

By Mr. BLOUNT:

Q. Was your idea of that matter based upon the fact that the Crédit Industriel had brought to your attention and to the attention of the department the advantages it might have of furnishing an indemnity?—A. Not brought to my attention. What was brought to my attention I could not have ventured to use in any way.

Q. Well, brought to the attention of the department?—A. I understood that the proposition was submitted from the days of Mr. Evarts, down; that the Crédit Indus-

triel had proposed to Mr. Evarts the plan of furnishing the indemnity for Peru, if Peru ever had an opportunity to offer one.

Q. Would not this fact have had something to do with your reaching that conclusion, that the *Crédit Industriel* had the facilities, that is to say, the money, to furnish it, and was making a proposition that might be carried out successfully, and in the end to bring about peace?—A. My opinion about the ability of the *Crédit Industriel* to carry out its proposed plan was derived more from knowledge acquired in Peru and Chili than from knowledge acquired here. I knew the plan was proposed here, because it was a matter of discussion both by Mr. Evarts and Mr. Blaine, I suppose, for some time.

Q. Why would you apply that to the *Crédit Industriel* when it is not mentioned, any more than you would to the Peruvian Company?—A. Because I never heard of any other. That was the only one I ever heard of. I never heard of but one company that came forward with a proposition to pay the indemnity for Peru.

Q. You had not heard of the Peruvian Company at all?—A. I never heard of the Peruvian Company until just before I went on my mission, as I tell you.

By Mr. BELMONT:

Q. Had you ever heard of what was called the Cabrera proposition?—A. No; I had never heard of that. That was with regard to Bolivia, I think. I saw some letters about it, I believe.

By the CHAIRMAN:

Q. When you say you think the *Crédit Industriel* was embraced in this dispatch, do you mean in the sense that it was adopted by the Government of the United States and would be pressed in the manner in which the claim of an American citizen would be pressed?—A. No, sir; by no manner of means. What I understood was that the project was to be considered by any minister who went out there; that, if the opportunity offered of furnishing the indemnity, he would give it what natural assistance he could, but that if any plan was proposed which required a guarantee or a protectorate, or anything of that sort, then the whole matter was to be referred back to the department. I want to call your attention to one thing with regard to the *Crédit Industriel* which, I think, has been somewhat overlooked. If the time had ever come when the *Crédit Industriel* had had an opportunity to offer to furnish this indemnity, it would have been when Chili and Peru had been brought together and agreed to terms of negotiation. Whenever that happened the United States would have been not in the position of an intruder between them, but of a common friend who had brought them together. Therefore a minister who had stood in that position could not have gone on without discussing the character of the indemnity that Chili would accept, and the means that Peru had to furnish it. Naturally he would have had to become familiar with the plans of the company, and he would have been justified in saying to Chili, "Here is a company which offers to pay over the money, and you ought to take it"; and to that extent, I think, the minister would have been perfectly justified in giving aid to the *Crédit Industriel*, if you call that aid.

Q. Supposing that condition of things had arisen, and you had referred the question back to the government at Washington, what would or could the government properly have done by way of advancing their proposition, in your judgment?—A. Oh, that is a difficult question to answer, because that proposition might have required a guarantee of the payment of the money back, or it might have required a guarantee from the United States that Tarapaca should be held and administered by the company, and it would have been a question of large politics, which would have been decided by the Cabinet.

Q. Would the government naturally do that in the case of a foreign company?—A. I think it very doubtful; unless there were peculiar circumstances attending it, as has been the case where England has interfered at times. The United States might have thought it worth while to save Peru by interfering and guaranteeing its debt. I do not think that is very likely, however.

By Mr. BELMONT:

Q. Do you understand that there was any other plan proposed by which peace could be brought about between Chili and Peru, and an indemnity paid under the good offices of the United States?—A. I never understood that there was any other plan by which the money could be furnished, except some plan which could be devised by the *Crédit Industriel* when it came to consider the matter.

Q. And you understood that the instruction of June 15 did embrace the *Crédit Industriel*?—A. Unquestionably; I have no doubt about that, as a minister, reading that dispatch.

Q. Allow me one other question. If you had drafted that dispatch, would you have thought it necessary to name the *Crédit Industriel*?

The WITNESS. Well, that is a queer sort of a question.

Mr. BELMONT. I should like to have it answered, whether it is a queer sort of a question or not.

The WITNESS. I do not know that you have a right to ask me what I would do under a certain supposititious state of things. You can ask me what I have done.

Q. Did you draft the dispatch or not?—A. That question I have distinctly asked the committee to decide whether I am bound to answer or not, having stated my reasons for thinking it not proper to be asked.

Mr. BELMONT. We do not seem to be getting along very fast. [To the witness.] You say you have copies of the letters you have written to Mr. Randall?

The WITNESS. Yes; and if you think (as your question would seem to imply) that there is any contradiction between what I am saying and what I said to Mr. Randall, you had better read the letters.

Mr. BELMONT. I can assure you that nothing is further from my intention than to suggest anything of the sort; all I want is a clear explanation of those instructions.

Mr. BLOUNT. The question was raised, Mr. Belmont, if your inquiry as to whether Mr. Trescot wrote that dispatch of June 15 or not, should be answered. I would like to ask Mr. Trescot this: As all these matters have been given to the public, the correspondence published, and the secrecy being thereby removed, where is the difficulty in answering whether you drafted that dispatch or not?

The WITNESS. Simply because I do not think it is proper that the action of a Secretary in preparing a dispatch should be made a matter of public discussion. For instance, suppose he came to me and said, "I am very busy; but here I have got to discuss a question—I have to make a report on the fishery question, and you have been to Halifax, and I wish you would look that matter over and prepare a dispatch and I will modify it if I see fit." Suppose I did that, would it not be a violation of confidence, and would it not be showing a want of delicacy if I afterwards went about saying, "Oh, Mr. Blaine did not write that dispatch; I wrote it"?

Mr. BLOUNT. I do not think that is a parallel case. You are not going about saying that you wrote this dispatch, but you are before a committee of the House of Representatives who are making inquiry of you concerning it.

The WITNESS. But isn't it the Secretary's dispatch? Does it make any difference who wrote it?

Mr. BLOUNT. However, if you wrote it under instruction of the Secretary and he modified it, your telling that would not be any violation of secrecy or confidence.

The WITNESS. I think the same question might be extended to a dozen other dispatches.

Mr. BLOUNT. That is very true, but I am asking because I do not think the committee will care to press the question.

The CHAIRMAN. As that is a question which it is desirable we should decide upon, I think the committee had better go into executive session. But I will suggest that the President's letter of consent clearly contemplated that we would not go into that branch of the inquiry.

Mr. BELMONT. I would like to have that letter read.

The CHAIRMAN. The clerk can read it.

Mr. DEUSTER. For my part I think Mr. Trescot should be allowed to use his own discretion in answering or not answering the question whether he wrote these dispatches or not.

Mr. BELMONT. I think Mr. Trescot has used his own discretion, perfectly.

The CHAIRMAN. It does not seem to me there is any great importance in the fact whether Mr. Trescot's hand absolutely traced the language of that dispatch or not. I do not see how it is material.

Mr. BLOUNT. That is the way I regard it. But Mr. Belmont seems to have a purpose which has not fully manifested itself, and I was anxious to let him go on.

Mr. BELMONT. I will state the purpose. If Mr. Trescot drafted the dispatch he would be competent to explain its meaning.

The WITNESS. I have explained what I understood to be its meaning as plainly as language can do it.

The CHAIRMAN. I suppose all that Mr. Trescot wishes to intimate is, that he desires technically to keep within the request of the President and the department.

The WITNESS. Precisely.

The CHAIRMAN. If it is necessary to go beyond that, let us go into executive session and consider it.

Mr. BLOUNT. Let the letter be read that Mr. Belmont calls for.

The clerk read the letter referred to as follows:

"DEPARTMENT OF STATE,
"Washington, June 14, 1882.

"SIR: The President directs me to acknowledge the receipt of your letter of yesterday. In it you inform him that Mr. Trescot, minister to Peru, is summoned to appear before the House Committee on Foreign Affairs, to give evidence in an inves-

tigation now pending before the committee. In the name of the committee you ask the President to consent that Mr. Trescot may so testify, he not feeling free to do so unless such consent is first obtained.

"In reply to this communication the President directs me to say that he sees no reason why Mr. Trescot, as well as any other citizen, should not be examined on all subjects properly and constitutionally within the jurisdiction of the committee. He cannot suppose that Mr. Trescot would refuse to answer any question within the proper limits of Congressional inquiry and action, or that the committee will extend their inquiries into subjects which are constitutionally placed within Executive discretion.

"The President to-day sends to the Senate voluminous correspondence between this department and Mr. Trescot in reference to the relations of Chili and Peru, which he conceives does not fall within the provisions of the Senate resolution, which omits to ask the communication of that which in the President's opinion is incompatible with the public interests.

"The judgment as to what, in matters of state, it is consistent with the public interests to communicate, the President has not delegated to Mr. Trescot. Many things must necessarily daily take place between the Executive and subordinates in the conduct of public affairs which cannot be disclosed without public injury. The President assumes that the committee do not propose to enter upon such inquiries. The President further directs me to say, in order to avoid misapprehension, that, in so far as the questions of the committee may relate to him personally as distinguished from his official acts, he leaves every witness before them free to disclose all he knows, and hopes the committee will not refrain from questioning from any regard for him.

"I have the honor to be, sir, your obedient servant,

"FRED'K T. FRELINGHUYSEN.

"Hon. CHARLES G. WILLIAMS,

"Chairman of the Committee on Foreign Affairs, House of Representatives,"

Mr. BLOUNT. I do not see how that applies to Mr. Blaine's dispatches. He is out of office, and these matters were under a different administration, and the correspondence has all been published.

The CHAIRMAN. Is the question insisted on, Mr. Belmont?

Mr. BELMONT. I will first ask Mr. Trescot whether he considers the drafting of the dispatch such a matter of confidence as puts it within the meaning of this letter of the President.

The CHAIRMAN. I think that is not a question for the witness to decide; it is for the committee. If the question is insisted on, I think the committee had better go into executive session and decide it.

Mr. BLOUNT. I think we should save time by doing so.

Mr. BELMONT. Probably it would not be worth while to waste much time over it; but still I would like to get the decision of the committee on that point.

The CHAIRMAN. Very well. The committee will then go into executive session.

After a short executive session the doors were opened, and the examination of the witness proceeded with, as follows:

The CHAIRMAN. Proceed, Mr. Belmont.

Mr. BELMONT. You have already stated, Mr. Trescot—

The CHAIRMAN [interrupting]. As I understand, Mr. Belmont, you waive the question.

Mr. BELMONT [to the witness]: You have already stated—

The CHAIRMAN. Is it understood, Mr. Belmont, that you waive the question concerning which we went into executive session?

Mr. BELMONT. I want to finish my examination.

The CHAIRMAN. I think the committee should proceed in order.

Mr. BELMONT. Well, I have no more questions at all to ask Mr. Trescot. I waive all questions.

The CHAIRMAN. I understood Mr. Belmont to say that he was willing to withdraw the question, and that was the conclusion arrived at. If that is so, we should certainly be glad to have him proceed with any other branch of the examination. I do not desire to interfere with any further examination, except to announce the conclusion of the committee in executive session.

Mr. BELMONT. I move we adjourn.

Mr. BLOUNT. I was absent a moment ago, and did not hear all that was said.

The CHAIRMAN. I asked Mr. Belmont, when the witness was recalled, if he had withdrawn the question which he propounded to Mr. Trescot. His response to me was that he desired to put no further questions whatever. I then announced that the decision of the committee was that Mr. Belmont's question, upon which we went into executive session, would be withdrawn, and I invited Mr. Belmont to put any further questions that he desired; but he announces that he has none.

Mr. BLOUNT. As it seems that we do not quite understand each other, I ask that the committee go into executive session again.

The CHAIRMAN. All I desired to announce was the conclusion which we came to in executive session.

Mr. BLOUNT. I am not criticising the chair at all; I ask that we go into executive session.

Mr. RICE. I suggest that the examination of the witness be suspended for this morning.

Mr. BLOUNT. I hope not. Let us go into executive session.

The room was cleared, and after an executive session of a few moments, the examination was again proceeded with.

Mr. BELMONT. Mr. Trescot, I have concluded to waive my question in regard to your drafting of the dispatch, and as I have pretty thoroughly gone over the ground already, the supplementary questions I have put to-day have satisfied me that there is no need of my going on with the examination.

The CHAIRMAN. Do I understand, Mr. Belmont, that you have now put all the questions you desire?

Mr. BELMONT. Yes.

By Mr. BLOUNT:

Q. Do you understand, Mr. Trescot, the policy of the State Department under Mr. Blaine to have been one of encouragement to the Crédit Industriel in its efforts in the matter of an adjustment between Chili and Peru? If so, what was the nature of that encouragement?—A. I have already answered, very nearly, that question; but I will state that I understood the policy of the State Department toward the Crédit Industriel to be this: That if that company could furnish the money to Peru to pay an indemnity that would satisfy Chili, it would be a source of gratification to the department, and of course would facilitate its negotiations very much; but that that support was to go no further than a friendly attitude towards it; that if the plan submitted by the Crédit Industriel required the guarantee of the United States or a protectorate over Peru, or anything of that kind, the whole matter must be referred back to the department for consideration and decision, with an indication (very strong, I think, in his instruction) that the Secretary did not approve of such a final result or approve of assuming such a responsibility. But I was not authorized to do anything further than to report to the department what the conditions and the details were of the plan that was proposed.

Q. With that qualification on the part of the department, I understand you to say that the department had a friendly disposition towards the Crédit Industriel and encouraged it, subject to that qualification.—A. I would have felt in my position that I was bound to give it any encouragement and help that I could, subject to that limitation.

Mr. BLOUNT. That is all I have to ask.

By the CHAIRMAN:

Q. Have you any further knowledge as to the Crédit Industriel, or its agents, in its relation to Peruvian matters and to the United States, which you have not disclosed?—A. No, sir; I have nothing at all that I can recall.

Q. Who were its agents in Peru?—A. I think Mr. Larabue was agent in Lima and Mr. Lacreteille was agent in Santiago.

Q. Did you have any communication with them?—A. Yes, sir; I had.

Q. Are you at liberty to speak of that?—A. Certainly. When I went to Lima Mr. Larabue called to lay before me the condition of Tarapaca as he understood it, what its value was, and their anxiety to be able to make a proposition that would secure the administration of its nitrates. When I went to Santiago Mr. Lacreteille did the same thing. I told them that so far as the United States was concerned the question was not a practical question then; that I would be glad to receive any information they had to give, but that all I could do for them was to keep them informed as to the possibility of negotiations by which Tarapaca could be preserved to Peru. They then told me, as I understood them, that their object was purely a financial one; that they were anxious to administer the nitrates of Tarapaca. Mr. Lacreteille told me that he had made the same proposition to Chili that Mr. Larabue had made to Peru if Tarapaca was retained, which was to assume the management of their national debt if they were allowed to administer the nitrates. I understood him to say that the Chilean Government had declined anything of the sort, having already employed Mr. Gibbs, an English merchant, to do something of the same kind. There was nothing further passed between us, except something was said about Tarapaca and its value, and the position our government held in the matter.

Q. Did you give them any further assurances, personally or officially, than as you have stated?—A. No. They never asked me to do so, or indicated that they desired it. They were both gentlemen of high character and intelligence, and their behavior

was as proper as it could be. They wanted such information as would enable them to form an opinion as to the possibility of a negotiation between Chili and Peru; and further than that, gave to me their opinion of Tarapaca and its resources, and what they could do.

By Mr. LORD:

Q. Had you any conferences with the representatives of the *Crédit Industriel* in this country before you left?—A. Not any further than the same sort of general communication as to their objects and the support which would be given them by the United States. I heard that discussed. Of course I was not authorized to give any assurances one way or the other.

The CHAIRMAN. Are there any further questions? If there are none, this will conclude Mr. Trescot's examination, and, as far as the committee are now advised, it will conclude the investigation.

Mr. BLOUNT. I would suggest that the committee simply adjourn until the regular day of meeting.

The CHAIRMAN. The committee will stand adjourned until Friday morning at 10 o'clock.

Adjourned.

LETTER FROM MR. ROBERT E. RANDALL.

To the Committee on Foreign Affairs, House of Representatives, Washington, D. C.:

GENTLEMEN: On reading the testimony of Hon. James G. Blaine, reported by the Associated Press and published in the daily papers, as given before your committee on the 13th of June, I was greatly surprised to find the denial upon his part of several material points in my testimony, given likewise before your committee on the 11th of May last. This left me no alternative but to request of you the opportunity to verify my testimony. I therefore addressed you the following letter:

NEW YORK HOTEL, *New York, June 17, 1882.*

SIR: From the published report of Hon. James G. Blaine's testimony before your committee on the 13th instant, it appears that he has on several material points contradicted my testimony given on the 11th May, also before your committee, and which I ask that I shall be afforded the opportunity to verify at such a time as your committee may designate.

To be able to do so, however, I require and request that you instruct your reporter to furnish me at the earliest convenient day with a copy of Mr. Blaine's testimony above referred to.

Awaiting your reply, I remain yours truly,

ROBT. E. RANDALL.

HON. CHARLES G. WILLIAMS,
*Chairman of the Committee on Foreign Affairs
of the House of Representatives, Washington, D. C.*

In due course I received the following reply:

HOUSE OF REPRESENTATIVES, COMMITTEE ON FOREIGN AFFAIRS,
Washington, D. C., June 20, 1882.

DEAR SIR: I am in receipt of yours of the 17th instant, requesting that you be afforded an opportunity to verify your testimony given on the 11th of May before the subcommittee of the Committee on Foreign Affairs in New York, so far as contradicted by the testimony of Hon. James G. Blaine before the committee in Washington on the 13th instant.

Your communication has been laid before the committee, and I am directed to say that although the examination of witnesses is virtually closed, so far as the committee can at present determine, they will receive a sworn statement from you which shall be pertinent in verification of the testimony so contradicted, if forwarded without delay, or as soon as the same can conveniently be prepared.

I herewith inclose copy of Mr. Blaine's testimony, as requested.

Very respectfully yours,

C. G. WILLIAMS,
Chairman Committee.

ROBT. E. RANDALL, Esq.

Mr. Blaine's testimony is somewhat diffuse; in almost every instance he repeats himself in detail. I regret, therefore, the necessity of being compelled to trespass upon you with this lengthy statement.

I addressed to His Excellency J. F. Elmore, Peruvian minister to the United States a letter on the 26th of June, 1882, in which I made inquiries as to certain statements made by Mr. Blaine in his testimony, as I felt assured that Mr. Elmore was able to give me the facts, and I shall in the course of this answer refer to this letter, as also to the testimony of Messrs. Trescott and Hitt.

Mr. Blaine, in answer to your chairman, asserts that his first intelligence or knowledge of the *Crédit Industriel* and its "programme" (the programme handed to me in September, 1880, in Paris, by Mr. Guillaume, and filed by me at the *State Department* on or about the 20th of October of the same year), was in February, 1881, when I called upon him at the Senate Chamber, upon the presumption that he was to be the Secretary of State.

This statement is correct. The interview was quite short. He stated to me he was going into the cabinet of President Garfield, and he requested me to furnish him at once with copies of "the programme du *Crédit Industriel*," the proposition of that company as to the said war, and also the letters and statements which Messrs. de Montferrand and Suarez had addressed to the then Secretary of State, Evarts. I furnished him with those documents on that or the following day at his residence. I saw Mr. Blaine at least on one subsequent occasion before he entered President Garfield's cabinet, and several times during the month of March, 1881, and, according to my recollection, during that month by appointment presented the Count de Montferrand to him.

These interviews, with the exception of the first, I understand Mr. Blaine to deny having taken place, as well as my subsequent visits to him during April, by stating that his first interview after entering office in connection with this matter, was early in April, with the Count de Montferrand.

Whether I saw him on the occasions stated, and whether I have correctly stated the circumstances attendant thereon, I leave to the committee to decide. I do not fear their decision, as Mr. Blaine's memory has been so defective as to all material facts connected with the *Crédit Industriel* and its representatives.

Whether Mr. Blaine at any time ever said to any one that the propositions contained in the "programme du *Crédit Industriel*" were "entirely inadmissible" that he "utterly refused to have anything whatever to do with it utterly," or that he said that "the United States could not touch it or think of touching it, and utterly rejected it," is of more moment, and I propose shall be determined by other evidence than my own word. I do not believe he ever did, to any one, make any such statement as he alleges. I believe that his testimony on this point is due to want of recollection, and is the consequence, to quote his own words, of the fact that "he was very busy on other matters" at that time. I will show to the committee that he always entertained the "programme," and far, far exceeded Mr. Evarts in his own indorsement and enthusiasm; that, to use my own words in my previous testimony, the propositions I made were entirely satisfactory to him; that he considered them feasible in every way; that he (representing the Foreign Department of the United States) would carry them out—that is, he would utilize the programme; that the payment of a war indemnity was absolutely necessary on the part of Chili to Peru, so as to preserve the territorial integrity of Peru; that "the *Crédit Industriel*" was the only institution or party able, prepared, and willing to pay so large a sum for Peru as \$30,000,000."

I beg to refer the committee at this point to the correspondence which took place between Count de Montferrand and this government, which was published in the "correspondence touching affairs in or between Peru and Chili," transmitted to Congress by the President on the 26th of January, 1882. The count addressed Assistant Secretary of State Hitt a letter dated Port au Prince, Hayti, April 22, 1881, in which he writes:

"You were pleased to authorize me to remain in communication with you on the subject of the proposals made by the *Crédit Industriel et Commercial*, with a view to facilitating the conclusions of the financial arrangements between Chili and Peru.

"On the occasion of the interview which you were pleased to procure for me with Mr. Blaine on the 2d instant, I stated that the *Crédit Industriel* or *Société du Pacifique*, which is the outcome thereof, was ready to discuss any modification that might be thought proper in the programme originally proposed. In the conference which I had with you, either before or after the audience with Mr. Blaine, I went so far as to add that the case might arise in which the *Pacifique Company* might be called upon to work, even for the account of Chili, the territory ceded or given as a pledge by the treaty of peace should be concluded, and that to the greatest advantage of Chili."

From the foregoing it is clear—

1st. That the Count de Montferrand was authorized to remain in communication with the department to facilitate the conclusion of the financial arrangements, "the programme du *Crédit Industriel*."

2d. That Mr. Blaine had not rejected this programme, as he asserts, to Count de Montferrand, but had only proposed modifications. Further, we find in this same letter the following significant paragraph referring to modifications:

"This must put an end to all apprehensions less one country may be favored in

preference to another by an indorsement of our programme. I do not insist upon this solidity of the co-operation offered by the Pacifique Company; that point is beyond discussion. I desire, however, respectfully to inquire whether *you do not think it would be well to induce Mr. Blaine to give the United States minister at Valparaiso instructions similar to those given by Mr. Evarts to Mr. Christiancy.*"

What were those instructions? Mr. Evarts, under date of February 17, 1881, instructed Mr. Christiancy (page 449, same correspondence).

"This department has been approached by Count de Montferrand, of Paris, and Mr. Suarez" * * * "with certain proposals or calculations of important financial interests in Europe, looking to financial aid and facilities to enable the two nations (Peru and Chili) to liquidate advantageously to both, as it is argued, the obligations produced by the war and needing to be met as a part of the terms of peace. I have said to Mr. Suarez" * * * "that I am always ready to press the mediation of this government towards an early and honorable peace between the belligerents; that the financial facility and aid which the private interests he represents can furnish towards a liquidation of the pecuniary obligations that the war may have created and which may need to be met, are calculated to assist restoration of peace; that in this light they will be laid before the representatives of the United States in Peru and Chili, and that any further responsibility of this government can only be determined by actual negotiations between the belligerents, asking this government to assume them.

"The programme, as it is called by these gentlemen, it would seem might form an element in the calculation of these belligerents as to the resources at their recourse in setting the terms of peace. It is to be observed that any part or responsibility that this government might be asked by the belligerents, or by any financial administration that might be admitted by them into the adjustment considered or adopted, to take, is reserved by this government to be treated with entire freedom whenever the matter should arise for consideration." * * * "You will, however, understand that the matter is placed before you only as an element which, if it can be made valuable and conducive to peace, this government would not like to have wanting to the belligerents, if their negotiations would find it useful."

In reply to the letter of Count de Montferrand, Mr. Hitt writes from Washington, on June 10, *inter alia*:

"The information you communicate in regard to the disposition and purposes of the Pacifique Company, as fully shown in the letter of their administration accompanying your own, agrees with the statements made by you at Washington. * * *

"I will, however, take pleasure in calling the attention of Mr. Blaine to the suggestion made at the conclusion of your letter in regard to the advisability of the instruction you indicate for our representative at Valparaiso."

In this letter the Assistant Secretary of State (who in his testimony states that he was from time to time consulted by Mr. Blaine as to *his* instructions to our representatives in South America, particularly in reference to the instructions given by General Hurlbut on June 15) writes the foregoing answer to Count de Montferrand *five days previous to the date of those instructions to General Hurlbut*, and it is fair and right to presume that the instructions given to General Hurlbut were in accord with "the programme."

Whether I presented the Count de Montferrand or not, I presented Mr. Suarez, his colleague, and the Peruvian minister, Mr. Elmore, to Mr. Blaine on the 18th of April, 1881. I arranged that interview, which was a long and a protracted one, and I now beg permission to quote from the letter of Mr. Elmore, hereto annexed, relative to the same. Mr. Elmore states:

"On the 15th of April, 1881, I received in New York the news of my appointment as confidential agent of the Provisional Government of Peru, which information was brought to me from Lima by Mr. Francesco de P. Suarez. I had learnt that you and Mr. Suarez were acting in the United States for the 'Société Générale du Crédit Industriel et Commercial,' of France, whose '*programme*' has now become historical. I knew that that programme had been formed and discussed with you in Paris, and had been presented by yourself to Secretary Evarts, and by Mr. Suarez to President Calderon, in Peru, who approved of it. It being then my duty to obtain, without delay, the recognition by the United States Government of the newly-formed Peruvian Government, I at once, with you and Mr. Suarez, went to Washington, and, you having previously arranged an interview with Mr. Blaine, then Secretary of State, I was introduced by you, on the 18th of April, at the State Department to the Secretary, at the same time you presented Mr. Suarez."

Mr. Elmore further states:

"I subsequently saw Mr. Blaine frequently in your company, by appointment and otherwise, and it would be difficult to find a man more uniformly cordial in his manner and attentive to business than Mr. Blaine was in all our interviews, without exception. I always understood that you were present and acted on behalf of the Crédit Industriel. We discussed solely the Chili-Peruvian question and the means to

secure an honorable peace that would be lasting between the belligerent republics. Secretary Blaine always recognized that this could be obtained only by the intervention of the United States, and showed that he was ready and willing to act. I always understood from him that the *Crédit Industriel* programme was approved of by him as offering Peru the only means to pay a war indemnity and preserve at the same time her territorial integrity; and I understood Mr. Blaine that he expected it would be necessary to utilize that 'programme.'

Mr. Elmore further states:

"My intercourse with Secretary Blaine continued up to his retirement from office to be most friendly. * * * I never understood that * * * he had ever changed his views as to the utilization of the *Crédit Industriel*'s programme to secure peace on the west coast of South America, or that he ever expected peace could be accomplished by the United States by any other means then known."

Again Mr. Elmore says, in answer to the question whether Mr. Blaine had at any time discussed with him the instructions given on the 15th of June to General Hurlbut, or on the 1st of December, 1881, to Mr. William Henry Trescot:

"I have already frankly stated what, during eight months of intercourse with Secretary Blaine, were my firm convictions in regard to his purposes, intentions, and his expectations to utilize the *Crédit Industriel* programme. It is unnecessary to enter into the details of what passed between us concerning the instructions you mention. I need only say that his instructions to General Hurlbut he described to me as being very strong and all that the rule could wish and tending to preserve her 'old boundaries.' I never on any occasion heard it even suggested that General Hurlbut or Mr. Trescot were to agree to the surrender to Chili of Tarapaca."

At this point I desire to call the attention of the committee to an incident related by Mr. Elmore, which must convince every fair-minded man of one of three things—either that Mr. Blaine, at the time when it occurred, was, as we believed him to be, honestly and earnestly in favor of utilizing the programme of the *Crédit Industriel* at all hazards; or that he pushed the conventional diplomatic license of misrepresentation beyond all precedent and example; or that when he testified before your committee he had utterly forgotten every material fact connected with his South American policy. Mr. Elmore states:

"I remember the incident you refer to" (to which I had in my interrogatories called his attention). "It was very interesting, and took place in one of our early interviews with Secretary Blaine at the State Department."

"After discussing the subject of the intervention of the United States and the chances of securing peace, the question arose, What would the United States do in case Chili should refuse to take an indemnity, as she had intimated she was willing to do, and should nakedly insist on retaining the Peruvian province of Tarapaca in defiance of the wishes of the United States? Would the United States submit?"

"While we were discussing this question Mr. Blaine quietly, without our knowledge, must have sent a messenger to the Navy Department. In a little while a memorandum was brought in and handed to him, which, after he had read it, he handed to you, and which you, with his permission, read aloud. It stated the number of war vessels which the United States had then in the Pacific. I believe there were five. You at once said to the Secretary, 'This is too small a naval force for any demonstration against Chili.' The Secretary replied to you in substance that the force did not signify; they were quite sufficient to make Chili understand what she might expect."

Again, Mr. Elmore says to the interrogatory whether Mr. Blaine had discussed with him the instructions of June 15 and December 1, 1881:

"I have already frankly stated what during eight months of intercourse with Secretary Blaine were my firm convictions in regard to his purposes, intentions, and expectations to utilize the '*Crédit Industriel* programme.' It is unnecessary to enter into details of what passed between us concerning the instructions you mention. I need only say that his instructions to General Hurlbut he described to me as being '*very strong, all that Peru or I could wish,*' and '*tending to preserve her old boundaries.*' I never on any occasion heard it even suggested that either General Hurlbut or Mr. Trescot were to agree to the surrender to Chili of Tarapaca."

Again, I desire briefly to refer to the testimony given by Mr. Trescot before your committee. It must be evident to you from Mr. Trescot's modest statements and the evidence of Mr. Hitt that he (Mr. Trescot) drew the instructions of the 15th of June to General Hurlbut, as also his own instructions on the 1st of December, and, to quote Mr. Blaine, "Mr. Trescot is a gentleman of entire integrity and of great frankness of character."

Mr. Trescot states that his attention was called to the *Crédit Industriel* "*in early spring, prior to the 15th of June,*" that he "had frequent interviews with Mr. Elmore, Mr. Suarez, and myself," and his "attention was called to the fact that the *Crédit Industriel* was the only means by which Peru could raise her war indemnity"; that "the several plans of the *Crédit Industriel* were referred to in the instruction of June 15," when Mr. Blaine says, "As you are aware, more than one proposition has been

submitted to the consideration of this government looking to a friendly intervention by which Peru might be enabled to meet the conditions." And he (Mr. Trescot) further states, in answer to Mr. Belmont, that "it was not necessary to put in the title of the company in order that the minister of Lima should understand what financial agency was referred to"; and "I (Trescot) would not have thought of putting in the title of the company."

This seems to dispose of the attempt made by Mr. Blaine to laugh down this plain, sensible inference by ridicule.

Further, in answer to the question whether Mr. Hurlbut would so have understood the matter, he says:

"I do not know what Mr. Hurlbut's knowledge on the subject was. *I would have understood it*"—(that Mr. Blaine—the instructions—referred to "the Crédit Industriel programme"). And at his second examination, on the 20th of June, Mr. Trescot further said: "That the instructions (June 15) unquestionably went to the extent that the plan of the Crédit Industriel was a part of those instructions. All I (Trescot) can say is that I have no doubt about it. *I never understood that there was ever any other plan except that of the Crédit Industriel before the State Department,*" and "unquestionably they" (the instructions of June 15) "embraced the Crédit Industriel."

In speaking of his own action under the instructions of the 1st of December, he states that he knew that "the State Department had a friendly disposition towards the Crédit Industriel, and encouraged it." "And that he would have felt in his position bound to give the Crédit Industriel encouragement and help"; that "if that company should furnish the money to supply Peru with an indemnity to satisfy Chili it would have been a great gratification to the department, and would of course have facilitated its negotiations very much; that if any plan submitted to the Crédit Industriel required a guarantee from the United States, or required a protectorate of Peru, or anything of that sort, the whole matter must be (should be) referred back to the department for consideration and decision."

Mr. Blaine in his testimony, in answer to Mr. Blount, states that the idea of a protectorate was always presented to him by the representatives of the Crédit Industriel; that "Mr. Randall boldly avows it in his testimony"; "that the programme never came to him in any other way" suggested. "That is the only way." "The doctrine of a protectorate" "was always rejected by him," and that he "peremptorily rejected it"; that "he never had any conversation with me"; that "by intimation or insinuation of any kind, or hint or innuendo, even approaches the confines of approving of it." "Why should I deny it to Mr. Suarez and Count de Montferrand, who were the principals, and talk in a different tone to Mr. Randall, who was the attorney."

My testimony goes to show "that at no time, not even from the first, was a protectorate asked of the United States by the Crédit Industriel; that when I first submitted the 'programme du Crédit Industriel' to Mr. Evarts he approved of the programme, but that, in regard to accepting a protectorate over the territory of Tarapaca, while in his opinion there was no objection whatever to the United States accepting that position, he thought it must not come from any offer of the United States, nor at the instance of a foreign corporation, but must be at the solicitation of the belligerents themselves; that if they should ask the United States to accept that position, he saw no possible reasons why we should decline it, and that at a proper time, if that case should ever arise, he would so recommend to the President of the United States, who, he had no doubt, would approve and communicate it to the Senate."

As I have stated heretofore, those were the views entertained by Mr. Blaine in his expressed opinions to me at our early interviews, and the subject was never therefore considered afterwards. I refer the committee to what Mr. Elmore states on this subject:

"The subject of a protectorate was never once discussed, and the word protectorate never once mentioned, in any interview between Secretary Blaine and myself, or in any interview with Mr. Blaine at which I was present with or without you. As I have said, I always understood Secretary Blaine to favorably entertain the Crédit Industriel programme. He never objected to it for any reason, so far as I know. The proposition discussed was the programme of the Crédit Industriel submitted by you to Secretary Evarts, otherwise called the Guillaume programme. I do not know that Mr. Blaine ever, while in office, expressed different views from those above stated to anybody at all; certainly not to Mr. Suarez, with whom I was on very intimate terms, seeing him every day, and who invariably expressed himself as highly satisfied with the results of his interviews with Secretary Blaine."

Mr. Blaine then leaves the question of the protectorate—which question, it seems to me, I have disposed of to his discomfiture—and testifies:

"Mr. Randall was a man of very inferior importance in this matter. These two Frenchmen were the French representatives of the Crédit Industriel, and they employed Mr. Randall merely as an attorney. Mr. Randall was not the man that I could have confided important developments to in this matter at all in any way."

In answer to this assertion the committee will appreciate my motive if I simply refer them without comment to that which Mr. Elmore in his letter states:

"As regards yourself, your position in this matter was clear and clearly understood by all. You were employed by the "Société-Générale de Crédit Industriel et Commercial" of Paris, and by Mr. Auguste Guillaume, the chairman of the continental Peruvian bondholders' committee, and it is known that your action with the State Department commenced months before the arrival in this country of Mr. Suarez and Count de Montferrand, who were sent out here at your request by cable.

"I should and did infer from our interviews with Mr. Blaine that your acquaintance with him was most confidential and of long standing. I thought he did confide in you all the important developments that took place in this affair, and so far as I could observe he treated you by no means as an inferior person, but, on the contrary, always with the utmost deference as a gentleman and as a friend."

I believe that what I have now stated on the authority of the recollections of other persons, as well as upon my own authority, will satisfy the committee that I am correct in my allegations that Mr. Blaine did discuss with me the instructions given to General Hurlbut and the instructions given to Mr. Trescot, but if there can be a question of doubt as to the former, I beg to call the attention of the committee to the interview that took place between myself, Mr. Blaine, General Hurlbut, Mr. Elmore, and Mr. Suarez, on the 27th of June, as stated by Mr. Elmore.

"On the 27th of June, 1881, we had a most interesting, pleasant, and, I thought, important interview with Secretary Blaine at the Department of State. It was on the occasion when General Hurlbut took leave of the Secretary of State prior to his departure for Peru. General Hurlbut, who left Washington on that day for New York, and sailed on the 2d of July, was present, together with you, Mr. Suarez, and myself, at that interview.

"A general conversation took place on the importance of General Hurlbut's mission to Peru. *Secretary Blaine expressed himself as highly satisfied and sure of his success, relying upon the great ability and energy of General Hurlbut, and upon the nature of the instructions given him.* In the same interview Mr. Suarez, who was also returning to Peru, with Mr. Blaine's warm approval, also took leave of the Secretary of State. At the same time the plan was discussed of your immediately going to Paris to inform our friends there of the fine outlook and favorable condition of affairs, and to urge the completion of the measures to carry out the programme of the Crédit Industriel. The propriety of my accompanying you to Europe was then suggested by you *and approved by all present*; consequently you and I did leave for Paris on the 9th of July, a week after the departure for Peru of General Hurlbut and Mr. Suarez. I may add that no one in Washington knew of my trip to Europe except Mr. Blaine, Secretary of State, who gave me a very complimentary letter to the United States minister in Paris, Mr. Noyes; and M. de Geofroy, the minister of France in Washington, who gave me a letter of introduction to the French department of foreign affairs. It was clearly in the minds of all of us, and I understood it was Mr. Blaine's purpose, *that peace was going to be secured on the west coast of South America, preserving to Peru her 'old boundaries' (Mr. Blaine's own words) through the political action of the United States, aided by the financial action of the Crédit Industriel of France, in execution of its contracts with the Government of Peru.*"

It certainly must now be clear to the committee that Mr. Blaine did inform me what those instructions were; and, from the testimony we have of Mr. Trescot, it is clear that he was under the impression, when he left this country, that Mr. Blaine still expected and intended to utilize the programme du Crédit Industriel.

There is one other question necessary to touch upon in Mr. Blaine's testimony, and that is his denial that I came to Washington in November, 1881, at his instance. Mr. Elmore, in his letter, states:

"On various occasions, when I saw Mr. Blaine after my return, alone, from Europe, on the 19th of August last, and before your return on the 6th of November, he always very kindly asked about you, *and after your arrival in New York, he asked me why you did not come to Washington to see him.* I recollect, as I was myself desirous to see you, that I stated in one of my notes to you Mr. Blaine's wish, and begged that you would lose no time in coming to give the Secretary the result of your conferences in Paris with the French parties representing the Crédit Industriel."

I now submit, as a part of my reply, the full text of the letter of Mr. Elmore, of June 26, 1882, so often referred to, and of the letter written by me, which called it out:

NEW YORK, June 26, 1882.

DEAR SIR: In the testimony of the Hon. James G. Blaine, given before the Committee on Foreign Affairs of the House of Representatives, on the 13th instant, relative to the efforts of the United States to secure peace between Peru and Chili, I find he has, in several instances, raised questions of veracity between himself and me on points embodied in my statement before the same committee on the 11th of May last.

Under these circumstances, and as the committee expects me to make a supplementary statement, I will be greatly obliged if you will answer the following interrogatories:

First. Were you not first introduced by me to the Secretary of State of the United States, Mr. James G. Blaine, on the 18th of April, 1881, and did you not understand that I arranged that interview between Mr. Blaine and yourself in my capacity as counsel for the Crédit Industriel of France?

Second. Did you not often afterwards see Mr. Blaine in company with me, and was it not always understood on these occasions that I was present in behalf of my clients, the Crédit Industriel? What did you always on these occasions understand were Mr. Blaine's views relative to interference of the United States, and to the approved and accepted programme of the Crédit Industriel as a means to be utilized by the United States to secure peace between Peru and Chili?

Third. Will you kindly state whether your intercourse with Mr. Blaine continued up to the time of his retirement from office, and whether he ever at any time gave you any reason to suppose either that he wished Peru to concern herself with the Landreau claim, or that he had changed his views as to the utilization of the programme of the Crédit Industriel in bringing about peace on the west coast of South America, or that he expected any peace could be accomplished by the United States through any other means?

Fourth. Can you recall the details of a remarkable reference made by Mr. Blaine in one of our early interviews to the naval forces of the United States in the Pacific at that time, and will you kindly state those details as you recall them?

Fifth. I find the following in the printed testimony of Mr. Blaine on page 345.

In answer to Mr. Dunnell, as to the dates of two documents, Mr. Blaine states, *inter alia*: "It was the doctrine of a protectorate (which the State Department under my administration always rejected) over these South American States * * * and which I peremptorily rejected. I never had a conversation with Mr. Robert E. Randall that by intimation or insinuation or any kind of hint or inuendo even approached the confines of approving it. Why should I deny it to Mr. Suarez and Count de Montferrand, who were the principals, and talk in a different tone to Mr. Randall, who was the attorney? Mr. Randall was a man of very inferior importance in this matter. These two Frenchmen were the French representatives of the Crédit Industriel, and they had employed Mr. Randall merely as an attorney here. Mr. Randall was not the man that I would have confided important developments to in this matter at all in any way."

Was the subject of a protectorate ever broached or discussed at any of our interviews with Mr. Blaine? Did Mr. Blaine, to you, ever object to the programme filed by me with the State Department, known as *Guillaume* programme du Crédit Industriel, while that department was under Mr. Evarts? Have you any reason to believe that Mr. Blaine expressed different views to that programme to others? Will you state what you understood or knew to be my position in this matter? Who employed me? Was I employed by "these two Frenchmen," as he calls them, or by the company? Did you infer from Mr. Blaine's deportment towards me at our several interviews that he regarded me either as a recent acquaintance, or, to use his own language, a person of "inferior importance," to whom he could not confide "important developments in this matter at all in any way"?

Sixth. If you remember, will you kindly state the circumstances of the interview at which we jointly took leave of Mr. Blaine in June, prior to our departure for Europe, at which General Hurlbut was present, and what did you then infer would be Mr. Blaine's attitude towards the future action of the Crédit Industriel?

Seventh. Will you inform me whether Mr. Blaine, at any time, discussed with you the instructions given to Gen. S. A. Hurlbut on June 15, 1881, or to Hon. Wm. Henry Trescot on December 1, 1881? If so, will you kindly state what he said of them, and their true intent and meaning, and was it ever understood that those gentlemen were to agree to the retention by Chili of Tarapaca?

Eighth. Mr. Blaine denies that he ever (except as addressing a polite query to you about your traveling companion), asked you why, on my return from Europe in November last, I did not come to Washington to see him (Mr. Blaine), as to the subject-matter of my visit to Paris. Did not Mr. Blaine so inquire, and did you not write to me to come and give Mr. Blaine the result of my conferences with the French parties representing the Crédit Industriel programme? State kindly all you remember as to this.

Yours, very sincerely,

ROBT E. RANDALL.

LEGACION DEL PERU,
ON LOS ESTADOS UNIDOS DE AMERICA,
Washington, June 30, 1882.

DEAR SIR: I am in receipt of your letter dated 26th instant, referring to certain differences which you consider to exist between your testimony of the 11th May last,

and that of the Hon. Jas. G. Blaine of the 13th instant, before the Committee on Foreign Affairs of the House of Representatives, and requesting me to answer a number of questions put by you under eight heads.

Without expressing any opinion as to the differences you point out between your testimony and that of Mr. Blaine, it affords me great pleasure, in view of the intimate relations which have existed between us since I became acquainted with you in April, 1881, and of your cordial co-operation with me in the great work of the liberation of Peru, to say that I was a witness of many of the circumstances referred to in your inquiries, and to make the following answers to them, taking them up in the order in which you present them in your letter.

Answer to your first interrogatory: On the 15th of April, 1881, I received, in New York, the news of my appointment as the confidential agent of the provisional government of Peru, which information was brought to me from Lima by Mr. Francisco de P. Suarez. I had learned that you and Mr. Suarez were acting in the United States for the "Société Générale de Crédit Industriel et Commercial" of France, whose "programme" has now become historical. I knew that that programme had been formed and discussed with you in Paris, and that it had been presented by yourself to Secretary Evarts, and by Mr. Suarez to President Calderon, of Peru, who approved of it. It being then my duty to obtain, without delay, the recognition by the United States Government of the newly formed Peruvian Government, I went at once with you and Mr. Suarez to Washington; and you having previously arranged an interview with the Secretary of State, Mr. Blaine, I was introduced by you, on the 18th of April, at the State Department, to the Secretary. At the same time you presented Mr. Suarez.

Answer to your second interrogatory: I subsequently saw Mr. Blaine frequently in your company, by appointment and otherwise; and it would be difficult to find a man more uniformly cordial in his manner and attentive to business than Mr. Blaine was in all our interviews, without exception. I always understood that you were present and acted on behalf of the Crédit Industriel. We discussed solely the Chili-Peruvian question, and the means to secure an honorable peace that would be lasting between the belligerent republics. Secretary Blaine always recognized that this could be obtained only by the intervention of the United States, and showed that he was ready and willing to act. I always understood from him that the Crédit Industriel programme was approved of by him, as offering Peru the only means to pay a war indemnity and preserve at the same time her territorial integrity; and I understood Mr. Blaine that he expected it would be necessary to utilize that programme.

Answer to the third interrogatory: My intercourse with Secretary Blaine continued, up to his retirement from office, to be most friendly. He never at any time gave me reason to suppose that he wished Peru to concern herself about the Landreau claims. In fact, he never once spoke to me about that claim. I never understood that he had considered it, or that he had ever changed his views as to the utilization of the Crédit Industriel programme to secure peace on the west coast of South America, or that he ever expected peace could be accomplished by the United States by any other means then known.

Answer to the fourth interrogatory: I remember the incident you refer to. It was very interesting, and took place in one of our early interviews with Secretary Blaine at the State Department. After discussing the subject of the intervention of the United States and the chances of securing peace, the question arose what would the United States do in case Chili would refuse to take an indemnity, as she had intimated she was willing to do, and should nakedly insist on retaining the Peruvian province of Tarapaca in defiance of the wishes of the United States? Would the United States submit? While we were discussing this question Mr. Blaine quietly, without our knowledge, must have sent a messenger to the Navy Department. In a little while a memorandum was brought in and handed to him, which, after he had read it, he handed to you, and which you, with his permission, read aloud. It stated the number of war vessels which the United States had then in the Pacific. I believe there were five. You at once said to the Secretary: "This is too small a naval force for any demonstration against Chili." The Secretary replied to you, in substance, that the force did not signify. They were quite sufficient to make Chili understand what she might expect.

Answer to your fifth interrogatory: The subject of a protectorate was never once discussed, and the word protectorate never once mentioned in any interview between Secretary Blaine and myself, or in any interview with Mr. Blaine at which I was present with or without you. As I have said, I always understood Secretary Blaine to favorably entertain the Crédit Industriel programme. He never objected to it for any reason, so far as I know. The proposition discussed was the programme of the Crédit Industriel, submitted by you to Secretary Evarts, otherwise called "*Gillaume Programme*." I do not know that Mr. Blaine ever expressed different views from those above stated, while in office, to anybody at all, certainly not to Mr. Suarez, with whom I was on very intimate terms, seeing him every day, and who invariably expressed himself as highly satisfied with the results of his interviews with Secretary Blaine.

As regards yourself, your position in this matter was clear and clearly understood by all. You were employed by the Société Générale de Crédit Industriel et Commercial, of Paris, and by Mr. Auguste Guillaum, the chairman of the continental Peruvian bondholders' committee, and it is known that your action with the State Department commenced months before the arrival in this country of Mr. Suarez and Count de Montferrand, who was sent out here at your request by cable.

I should, and did, infer from our interviews with Mr. Blaine that your acquaintance with him was most confidential and of long standing. I thought he did confide in you all the important developments that took place in this affair; and, so far as I could observe, he treated you by no means as an inferior person, but, on the contrary, always with the utmost deference as a gentleman and as a friend.

Answer to your sixth interrogatory: On the 27th of June, 1881, we had a most interesting, pleasant, and, I thought, important interview with Secretary Blaine at the Department of State. It was on the occasion when General Hurlbut took leave of the Secretary of State, prior to his departure for Peru. General Hurlbut (who left Washington on that day for New York, and sailed on July 2) was present, together with you, Mr. Suarez, and myself, at that interview.

A general conversation took place on the importance of General Hurlbut's mission to Peru. Secretary Blaine expressed himself as highly satisfied and sure of its success, relying upon the great ability and energy of General Hurlbut and upon the nature of the instructions given him. In the same interview Mr. Suarez, who was also returning to Peru, with Mr. Blaine's warm approval, also took leave of the Secretary of State. At the same time the plan was discussed of your immediately going to Paris to inform our friends there of the fine outlook and favorable condition of affairs, and to urge the completion of the measures to carry out the programme of the Crédit Industriel. The propriety of my accompanying you to Europe was then suggested by you, and approved by all present. Consequently you and I did leave for Paris on the 9th of July, a week after the departure for Peru of General Hurlbut and Mr. Suarez. I may add that no one in Washington knew of my trip to Europe except Mr. Blaine, Secretary of State, who kindly gave me a very complimentary letter to the United States minister in Paris, and M. de Geofroy, minister of France in Washington, who gave me a letter of introduction to the French department of foreign affairs.

It was clear in the minds of all of us, and I understood it was Mr. Blaine's purpose, that peace was going to be secured on the west coast of South America, preserving to Peru her "*old boundaries*" (Mr. Blaine's own words), through the political action of the United States of America, aided by the financial action of the Crédit Industriel of France in execution of its contracts with the Government of Peru.

Answer to your seventh interrogatory: I have already frankly stated what, during eight months of intercourse with Secretary Blaine, were my firm convictions in regard to his purposes, intentions, and his expectations to utilize the Crédit Industriel programme. It is unnecessary to enter into details of what passed between us concerning the instructions you mention. I need only say that his instructions to General Hurlbut he described to me as being "very strong," "all that Peru or I could wish," and "tending to preserve her old boundaries." I never, on any occasion, heard it even suggested that either General Hurlbut or Mr. Trescot were to agree to the surrender to Chili of Tarapaca.

Answer to your eighth interrogatory: On various occasions when I saw Mr. Blaine after my return, alone, from Europe on the 19th of August, and before your return on the 6th of November, he always very kindly asked about you; and after your arrival in New York he asked me why you did not come to Washington to see him. I recollect, as I was myself desirous to see you, that I stated in one of my notes to you Mr. Blaine's wish, and I begged that you would lose no time in coming to give the Secretary the result of your conferences in Paris with the French parties representing the Crédit Industriel programme.

Believe me, very faithfully, yours,

J. F. ELMORE.

ROBT E. RANDALL, Esq.,
New York City.

One word more. Mr. Blaine, in his testimony, affects to speak of the propositions of the Crédit Industriel as most "extraordinary," and to allege by implication that they offered no ground on which the Government of the United States could even entertain them. I need not dwell on the singular treatment which Mr. Blaine in his language bestows upon his distinguished predecessor, Mr. Evarts, who had both considered and approved these propositions. But I may be permitted to point out that these propositions came from *bona-fide* creditors of Peru, including American holders of at least four millions of legitimate Peruvian securities; that they asked no financial assistance from the United States Government; that they were intended to facilitate an object of common importance to all commercial nations, and that by accepting and acting

upon them the United States would have acquired, as Mr. Evarts saw, and as Mr. Blaine in repeated conversations gave other persons than myself reason to believe that he also saw, a great and lasting moral and political preponderance in the affairs of South America, involving a real control of the Isthmus of Panama without the expenditure of a dollar of American money, without burning a fuse or firing a shot.

I remain, gentlemen, your obedient servant,

ROBT E. RANDALL.

NEW YORK CITY, *July 7, 1882.*

NOTE.—I inclose herewith, to be filed with the committee as part of this statement, His Excellency J. F. Elmore's original letter to me, dated Washington, June 30, 1882.

ROBT E. RANDALL.

CITY AND COUNTY OF NEW YORK, ss:

On this 8th day of July, 1882, personally appeared before me, a notary in and for said city and county, Robert E. Randall, to me known, and known to me to be the individual who executed the foregoing statement, and the said Robert E. Randall swears that the contents of the above statement are true, so far as his knowledge as to the same, and to the best of his knowledge and belief that the allegations therein contained, as made by others, are true, most of such facts being personally known to him, the said Robert E. Randall.

[SEAL.]

R. H. FULLER,
Notary Public, New York County.

LEGACION DEL PERÚ,
EN LOS ESTADOS UNIDOS DE AMÉRICA,
Washington, June 30, 1882.

DEAR SIR: I am in receipt of your letter, dated 26th instant, referring to certain differences which you consider to exist between your testimony of the 11th May last and that of the Hon. James G. Blaine of the 13th instant before the Committee on Foreign Affairs of the House of Representatives, and requesting me to answer a number of questions put by you under eight heads.

Without expressing any opinion as to the differences you point out between your testimony and that of Mr. Blaine, it affords me great pleasure, in view of the intimate relations which have existed between us since I became acquainted with you, in April, 1881, and of your cordial co-operation with me in the great work of the liberation of Peru, to say that I was a witness of many of the circumstances referred to in your inquiries, and to make the following answers to them, taking them up in the order in which you present them in your letter:

Answer to your first interrogatory.

On the 15th April, 1881, I received in New York the news of my appointment as the confidential agent of the provisional government of Peru, which information was brought to me from Lima by Mr. Francisco de P. Suarez. I had learnt that you and Mr. Suarez were acting in the United States for the "Société Générale de Crédit Industriel et Commercial," of France, whose "*programme*" has now become historical. I knew that that programme had been formed and discussed with you in Paris, and that it had been presented by yourself to Secretary Evarts, and by Mr. Suarez to President Calderon of Peru, who approved of it.

It being then my duty to obtain without delay the recognition by the United States Government of the newly-formed Peruvian Government, I went at once with you and Mr. Suarez to Washington; and, you having previously arranged an interview with the Secretary of State, Mr. Blaine, I was introduced by you on the 18th of April, at the State Department, to the Secretary. At the same time you presented Mr. Suarez.

Answer to your second interrogatory.

I subsequently saw Mr. Blaine frequently in your company, by appointment and otherwise, and it would be difficult to find a man more uniformly cordial in his manner and attentive to business than Mr. Blaine was in all our interviews, without exception. I always understood that you were present and acted on behalf of the *Crédit Industriel*. We discussed solely the Chili-Peruvian question and the means to secure an honorable peace, that would be lasting, between the belligerent republics. Secretary Blaine always recognized that this could be obtained only by the intervention of the United States, and showed that he was ready and willing to act. I always understood from him that the *Crédit Industriel* programme was approved of by him, as offering Peru the only means to pay a war indemnity and preserve at the same time her territorial integrity; and I understood Mr. Blaine that he expected it would be necessary to utilize that programme.

Answer to your third interrogatory.

My intercourse with Secretary Blaine continued up to his retirement from office to be most friendly. He never at any time gave me reason to suppose that he wished Peru to concern herself about the Landreau claim; in fact, he never once spoke to me about that claim. I never understood that he had considered it, or that he had ever changed his views as to the utilization of the *Crédit Industriel* programme to secure peace on the west coast of South America, or that he ever expected peace could be accomplished by the United States by any other means then known.

Answer to your fourth interrogatory.

I remember the incident you refer to. It was very interesting, and took place in one of our early interviews with Secretary Blaine, at the State Department.

After discussing the subject of the intervention of the United States, and the chances of securing peace, the question arose, what would the United States do in case Chili would refuse to take an indemnity, as she had intimated she was willing to do, and should nakedly insist on retaining the Peruvian province of Tarapaca in defiance of the wishes of the United States? Would the United States submit? While we were discussing this question, Mr. Blaine, quietly, without our knowledge, must have sent a messenger to the Navy Department. In a little while a memorandum was brought in and handed to him, which, after he had read it, he handed to you, and which you with his permission, read aloud. It stated the number of war vessels which the United States had then in the Pacific; I believe there were five. You at once said to the Secretary: "This is too small a naval force for any demonstration against Chili." The Secretary replied to you in substance that the force did not signify; they were quite sufficient to make Chili understand what she might expect.

Answer to your fifth interrogatory.

The subject of a protectorate was never once discussed and the word protectorate never once mentioned in any interview between Secretary Blaine and myself, or in any interview with Mr. Blaine at which I was present with or without you.

As I have said, I always understood Secretary Blaine to favorably entertain the *Crédit Industriel* programme. He never objected to it for any reason, so far as I know. The proposition discussed was the programme of the *Crédit Industriel* submitted by you to Secretary Evarts, otherwise called the "*Guillaume programme*."

I do not know that Mr. Blaine ever expressed different views from those above stated while in office to anybody at all, certainly not to Mr. Suarez, with whom I was on very intimate terms, seeing him every day, and who invariably expressed himself as highly satisfied with the results of his interviews with Secretary Blaine.

As regards yourself, your position in this matter was clear, and clearly understood by all. You were employed by the *Société Générale de Crédit Industriel et Commercial* of Paris, and by Mr. Auguste Guillaume, the chairman of the Continental Peruvian Bondholders' Committee; and it is known that your action with the State Department commenced months before the arrival in this country of Mr. Suarez and Count de Montferrand, who were sent out here at your request by cable.

I should and did infer from our interviews with Mr. Blaine that your acquaintance with him was most confidential and of long standing. I thought he did confide in you all the important developments that took place in this affair, and, so far as I could observe, he treated you by no means as an inferior person, but, on the contrary, always with the utmost deference as a gentleman and as a friend.

Answer to your sixth interrogatory.

On the 27th June, 1881, we had a most interesting, pleasant, and, I thought, important interview with Secretary Blaine at the Department of State. It was on the occasion when General Hurlbut took leave of the Secretary of State, prior to his departure for Peru. General Hurlbut (who left Washington on that day for New York, and sailed on July 2) was present, together with you, Mr. Suarez, and myself, at that interview.

A general conversation took place on the importance of General Hurlbut's mission to Peru. Secretary Blaine expressed himself as highly satisfied, and sure of its success, relying upon the great ability and energy of General Hurlbut, and upon the nature of the instructions given him. In the same interview, Mr. Suarez, who was also returning to Peru, with Mr. Blaine's warm approval, also took leave of the Secretary of State. At the same time the plan was discussed of your immediately going to Paris to inform our friends there of the fine outlook and favorable condition of affairs, and to urge the completion of the measures to carry out the programme of the *Crédit*

Industriel. The propriety of my accompanying you to Europe was then suggested by you, and approved by all present. Consequently you and I did leave for Paris on the 9th of July, a week after the departure for Peru of General Hurlbut and Mr. Suarez. I may add, that no one in Washington knew of my trip to Europe, except Mr. Blaine, Secretary of State, who kindly gave me a very complimentary letter to the United States minister in Paris, and Mr. de Geofroy, minister of France in Washington, who gave me a letter of introduction to the French department of foreign affairs.

It was clear in the minds of all of us, and I understood it was Mr. Blaine's purpose, that peace was going to be secured on the west coast of South America, preserving to Peru her "*old boundaries*" (Mr. Blaine's own words), through the political action of the United States of America, aided by the financial action of the Crédit Industriel of France, in execution of its contracts with the Government of Peru.

Answer to your seventh interrogatory.

I have already frankly stated what, during eight months of intercourse with Secretary Blaine, were my convictions in regard to his purposes, intentions, and his expectations to utilize the Crédit Industriel programme. It is unnecessary to enter into details of what passed between us concerning the instructions you mention. I need only say that his instructions to General Hurlbut he described to me as being "very strong," "all that Peru or I could wish," and "tending to preserve her old boundaries." I never on any occasion heard it even suggested that either General Hurlbut or Mr. Trescott were to agree to the surrender to Chili of Tarapaca.

Answer to your eighth interrogatory.

On various occasions when I saw Mr. Blaine, after my return alone from Europe on 19th August last, and before your return on 6th November, he always very kindly asked about you, and after your arrival in New York he asked me why you did not come to Washington to see him. I recollect, as I was myself desirous to see you, that I stated in one of my notes to you Mr. Blaine's wish, and begged that you would lose no time in coming to give the Secretary the result of your conferences with the French parties representing the Crédit Industriel programme.

Believe me, very faithfully, yours,

J. F. ELMORE.

ROBERT E. RANDALL, Esq.,
New York City.

The Committee on Foreign Affairs received the following sworn statement from the Hon. James G. Blaine, July 25, 1882. It was resolved to order it printed with the testimony in the Chili-Peruvian investigation, with the understanding that if Mr. Randall desired to file answer to it he would be granted leave to do so:

MR. BLAINE'S REPLY TO MR. RANDALL AND MR. ELMORE.

AUGUSTA, ME., July 21, 1882.

Hon. CHARLES G. WILLIAMS,

Chairman of Committee of Foreign Affairs, House of Representatives, U. S.:

SIR: I have received a copy of the supplementary statement which Mr. Robert E. Randall has been permitted to place before your honorable committee. As Mr. Randall's statement relates solely to my official conduct as Secretary of State, I respectfully ask the privilege of replying to his various accusations. I am also entitled to the privilege of answering the testimony of Mr. Elmore, the minister from Peru, who associates himself with Mr. Randall as a corroborative witness.

I found, in March, 1881, when I was appointed Secretary of State, a correspondence in progress touching the Crédit Industriel, Count Montferrand and Mr. Suarez appearing as its agents, and Mr. Randall as its attorney. The first official notice I took of the subject was in a formal interview on April 2d with Count Montferrand, at which Mr. Hitt, Assistant Secretary of State, was present as interpreter. The essential facts of that interview were correctly given by Mr. Hitt before your committee, and will be found on pages 335-342 of the official testimony. The substance of that interview was that, while I entertained a high respect for the Crédit Industriel and should be glad to have it made an effective instrumentality to aid Peru in her financial distress, the Government of the United States could not and would not become responsible for a foreign

corporation, in no way under American control and not in any manner legally answerable to the United States.

The proposition of the *Crédit Industriel* was thus expressed in a letter from Count Montferrand and Mr. Suarez to Mr. Evarts. This was the only one discussed by Count Montferrand, and was known as the "*Guillaume programme*."

"The proposition which the *Crédit Industriel* makes has been submitted to you by Mr. Robert E. Randall, together with the correspondence that passed between that gentleman and Mr. Guillaume, the chairman of the Peruvian bondholders' committee, and we request that the same be attached hereto as a part of this communication.

"The *Crédit Industriel*, you will observe, agrees to pay Chili and Peru, respectively, according to the proposition herein referred to, £550,000 per annum for a term of years to be agreed upon. This will justify a loan sufficient to cover the war indemnity demanded by Chili of £4,000,000 sterling, and leave to these respective countries sufficient to meet all legitimate national obligations. The *Crédit Industriel* agrees to obligate itself at the same time to arrange with the Peruvian bondholders the indebtedness held by them, amounting, principal and interest, to upwards of £45,000,000 sterling, without they being compelled to look to Peru, and in return, the *Crédit Industriel* simply requires that Chili shall surrender the conquered territory of Peru to Peru, *subject to a protectorate of the United States, guaranteeing to the Crédit Industriel the free and unobstructed shipment of the deposits of the said territory, to wit, the guano and nitrates, for the same term of years.*"

Mr. Randall, in attempting to escape from the responsibility of having asked an American protectorate on behalf of the *Crédit Industriel*, quotes Mr. Elmore, the Peruvian minister, as a witness. In a letter to Mr. Randall, Mr. Elmore says:

"The subject of a protectorate was never once discussed, and the word protectorate never once mentioned in any interview between Secretary Blaine and myself, or in any interview with Mr. Blaine, at which I was present with or without you.

"I always understood Secretary Blaine to favorably entertain the *Crédit Industriel* programme. He never objected to it for any reason, so far as I know. The proposition discussed was the programme of the *Crédit Industriel* submitted by you to Secretary Evarts, otherwise called '*Guillaume programme*.'"

The salient feature of the *Guillaume programme*, its very foundation, indeed, as above quoted, was "an American protectorate." Mr. Elmore says the proposition discussed was the *Guillaume programme*, and yet he adds that the subject of a protectorate was never once discussed or the "word protectorate never once mentioned." It is charitable to believe that, not being entirely familiar with the English language, Mr. Elmore had his letter prepared by some one else who was less scrupulous and careful than I have always supposed Mr. Elmore to be. The self-contradiction is so palpable that I am sure Mr. Elmore will be glad to correct it.

Another very strong objection to the United States adopting the *Guillaume programme* was that the Peruvian bondholders, for whose benefit it was devised, were all subjects of European governments. In Mr. Guillaume's original letter to Mr. Randall, of October 27, 1880, the following paragraph will be found:

"But the absolute principle, which should not be lost sight of, is that the *Crédit Industriel* shall be recognized and constituted the general liquidator, the worker of the guano and nitrates, the distributor of the proceeds to Chili and Peru, to the bondholders and creditors (*all resident in Europe*), that the *Crédit Industriel* should be the syndicate, and that the deposits shall be neutralized until the paying off of the accounts, as otherwise there would be competition, and, with it, a depreciation of prices, preventing the fulfilling of the engagements that have been taken."

The United States Government was thus to recognize and constitute "the *Crédit Industriel* the general liquidator," for the benefit of bondholders and creditors "*all resident in Europe*." Mr. Guillaume makes no reference whatever to any American interest, and he graciously adds that "as to the European governments, there is no doubt that they would see with great satisfaction the settlement of the question of the Peruvian bonds, which interest their people."

Some months later Count Montferrand and Mr. Suarez wrote as follows:

"The subjects of Holland, Belgium, and France represent over one-half of the bondholders of Peru, and are the customers of two-thirds of the guano and nitrate shipped to Europe, France using herself quite fifty per cent.; *the balance of the bonds are held in Great Britain.*"

In another part of their communication they ventured to hint that citizens of the United States were interested to a "limited extent." Mr. Randall now makes bold to declare that "four millions of the Peruvian bonds" are held in this country. Considering that the bonds amount to 230,000,000 in all, the attempt to manufacture an American interest out of 4,000,000 is rather lame and impotent. It is not improbable that these 4,000,000 were transferred to New York for the very purpose of declaring that an American interest existed.

But conceding that the bonds are honestly held in this country, Mr. Randall in urging the *Guillaume programme* asked that an American protectorate be extended over

the rescued provinces of Peru, for the purpose of enabling a French corporation to pay \$225,000,000 of Peruvian bonds held in Europe, and 4,000,000 held in the United States. It was this absurd proposition which I always rejected and never consented to entertain for a moment. The United States was perfectly willing that the European bondholders should get their pay in any honorable manner, but the idea of making this government a guarantor for the *Crédit Industriel* of France, and of extending an "American protectorate" over a portion of Peru for the benefit of the subjects of four European nations, is a piece of wild policy which may be safely left to the authors and representatives of the Guillaume programme, including their attorney, Mr. Robert E. Randall.

In Mr. Hurlbut's instructions, when he set out upon his mission, I included the following paragraph:

"As you are aware, more than one proposition has been submitted to the consideration of this government looking to a friendly intervention, by which Peru might be enabled to meet the conditions which would probably be imposed. Circumstances do not seem, at present, opportune for such action; but if, upon full knowledge of the condition of Peru, you can inform this government *that Peru can devise and carry into practical effect* a plan, by which all the reasonable conditions of Chili can be met without sacrificing the integrity of Peruvian territory, the Government of the United States would be willing to offer its good offices toward the execution of such a project."

I testified, as reported on page 226, that this referred to the *Crédit Industriel*, and instructed the American minister to inform his government whether "Peru could devise and carry into practical effect a plan, &c." If Peru could do this, the United States would lend its good offices. But the initiative was left wholly with Peru, and the minister had no instruction to take a single step, except to inform his government whether Peru could accomplish what was indicated.

During the autumn rumors were in circulation that General Hurlbut was going beyond the spirit and letter of these instructions, and taking an active part in urging the *Crédit Industriel* upon the Government of Peru, instead of merely waiting for Peru herself to devise a plan to secure a war indemnity for Chili, and then informing his government. As these rumors multiplied, I telegraphed General Hurlbut, from excess of caution, on the 27th of October, in these words:

"Influence of your position must not be used in aid of *Crédit Industriel* or any other financial or speculative association."

General Hurlbut immediately answered in these words:

"It has not been. It will not be."

General Hurlbut followed his telegraphic answer with a dispatch, dated November 2d, in which at much greater length he disavowed having done anything of the kind rumored. He made the following declaration touching his relation to the *Crédit Industriel*:

"I have looked upon the matter of these money arrangements between this corporation and the Peruvian Government as a matter exclusively Peruvian, *and not in the most remote degree connected with this legation.*"

And then, after some reference to the Peruvian Company, he closed with the following sweeping declaration. I have italicized some words to show that he had never received such instructions as Mr. Randall and Mr. Elmore assumed had been given him, and he never understood it was part of his duty to uphold the *Crédit Industriel*. General Hurlbut says:

"Let it suffice for me now to say that I never have proposed, nor do I now propose, *to aid officially or otherwise* any project having any relation to the money affairs of Peru, from any source, American or foreign, *unless instructed so to do*. I shall use my best endeavors to restore good government in Peru and to bring about a peace, but shall leave that republic free, as I have hitherto done, to negotiate as she pleases for the ransom of her national life."

From this declaration it will be seen that General Hurlbut maintained the precise relation to the *Crédit Industriel* that his instructions directed him to hold. To quote the verbal statements of a man, after he is dead, is always objectionable, and it will be noted that these written words of General Hurlbut are in conflict with the position assigned to him by Mr. Randall and Mr. Elmore in an alleged interview in the State Department. It is quite possible that Mr. Randall and Mr. Elmore may have been in the Department of State at the same time with General Hurlbut on the 27th of June, but they were not there by any appointment or for any interview, and certainly not for an interview in regard to the *Crédit Industriel*. I have no recollection at all of their being there together, but as it was a very common thing to have ten or fifteen callers at the same time they were possibly there and had some conversation with General Hurlbut. But the written statement of a man must stand against the recital of chance conversations reported after he is dead. It is for Mr. Randall and Mr. Elmore to reconcile their statements of General Hurlbut's position with his own definition of it in writing. His own definition of it corresponds precisely with all my statements,

and it pointedly contradicts the narrative given by Mr. Randall and Mr. Elmore There I leave it.

On the 19th of November I sent a communication to General Hurlbut, from which I extract the following :

"On the 27th ultimo I sent you the following telegram: 'Influence of your position must not be used in aid of Crédit Industriel or any other financial or speculating association.' On the 2d instant I received your reply in these words: 'It has not been, it will not be.' My reason for telegraphing you was the continual circulation of rumors that the aid of your legation was earnestly desired to promote the interests of the 'Crédit Industriel of France,' an association which is making efforts to reorganize the finances of Peru. Agents of the Crédit Industriel had visited the Department of State, and ineffectually endeavored to enlist the interest of this government in their behalf. However trustworthy the Crédit Industriel may be, I did not consider it proper for the department to have anything whatever to do with it. *It is a foreign corporation, responsible to French law, and must seek its patronage and protection from France. At the same time it is no part of your duty to interfere with its negotiations with the Peruvian Government.* If it can be made an effective instrumentality to aid that unhappy country in its prostrate and helpless condition, it would be ungenerous and unjust to obstruct its operations. Your duty is negative, and you will have fully complied with your instruction by simply abstaining from all connection with the association."

On the 1st of December, Mr. Trescot's instructions as special envoy were given him. The following is the only reference in the entire instruction to the subject of Peru furnishing the means for an indemnity to Chili. I do not see how it could have been more guarded in its terms or more reserved as to any committals on behalf of this government. I said :

"If negotiation be assured, the ability of Peru to furnish the indemnity will be a matter of direct interest. Upon this subject we have no information upon which definite instructions can now be based. *While you will carefully abstain from any interposition in this connection, you will examine and report to this department promptly any plans which may be suggested.*"

This closing instruction directed the minister to "carefully abstain from any interposition," and still left "any plans" for providing indemnity to be "suggested" by Peru and to be reported to the Department of State. It did not send out the "Guillaume programme" from Washington, ready made, to be urged upon Peru, as Mr. Randall and Mr. Elmore seem to have desired. The instructions to Mr. Hurlbut and Mr. Trescot did not differ on this point.

The extracts I have now given present every word I ever sent by telegraph or mail referring directly or by implication to the Crédit Industriel. If there be the slightest inconsistency or change from the beginning to the end I am unable, after careful review, to perceive it. In every way possible I guarded the government against being committed to the guarantee of that foreign corporation, or to the idea of an American protectorate as embraced in the Guillaume programme presented by Mr. Randall. At the same time I always expressed good-will to the corporation and the hope that its agency might be beneficially employed for the relief of Peru, if Peru could devise a plan to that end. It seems to have been Mr. Randall's misfortune that he could not draw the distinction between wishing success to a corporation and becoming responsible for its acts. By Mr. Randall's mode of reasoning, to wish a man prosperity in business, is to offer to indorse his notes in bank, and to guarantee him against loss.

The incident related by Mr. Randall and Mr. Elmore about my sending to the Navy Department to get an estimate of our naval strength in the South Pacific with the apparent intention of some warlike demonstration, is very amusing. It needs little comment beyond the following statement :

JULY 18, 1882.

In May last, after General Hurlbut was confirmed as minister to Peru, he requested that a naval vessel might be detailed to convey him from Panama to Callao. As private secretary to the Secretary of State at the time, I went to the Navy Department to get a list of the naval vessels in the South Pacific squadron with their respective locations, with the view of ascertaining the probable time of a vessel being at Panama.

That occasion, and the subsequent one, when a naval vessel was asked to convey Mr. Trescot from Panama to Valparaiso, were the only times when I heard of our naval strength in the South Pacific being discussed or in any way referred to in the Department of State.

WALKER BLAINE.

When the list was brought to me Mr. Randall and Mr. Elmore were in the department, and some remarks were made in an amusing vein about our great naval strength on the South Pacific coast, contrasting it with the seven English ironclads then on the same station. The fertile imagination and defective memory of Mr. Randall and

Mr. Elmore have invested the incident with a significance for which there was never the slightest justification.

But the covert intention of Mr. Randall and Mr. Elmore, in this narrative of imaginary incidents, was probably to create the impression that I was contemplating the possibility of a war in the South Pacific in which the United States might take part. Our naval strength in those waters was precisely the same when I left the department that it was when President Garfield was inaugurated. But as this foolish war rumor has been entertained in higher quarters, I have asked from Mr. Trescot his views on that and on some other issues involved in this investigation. I append Mr. Trescot's reply touching the South American policy—"all of which he saw; a great part of which he was."

From the joint statement of Mr. Randall and Mr. Elmore it would seem that these gentlemen were in prolonged and constant intercourse with myself as Secretary of State touching the *Crédit Industriel*. Our memories differ. I feel quite sure that I never exchanged a word with Mr. Elmore in regard to the *Crédit Industriel* while I was in the Department of State. My recollection on this point is strengthened by the fact that in all the letters which Mr. Elmore addressed to me, some of them very long and very minute, intended to treat exhaustively every phase of the Peruvian question, there is not a single reference of any kind whatever to the *Crédit Industriel*. And yet, if I were to judge Mr. Elmore by his statements made in Mr. Randall's supplementary testimony, I should infer that he came to the United States as the agent of the *Crédit Industriel*, and not as minister from Peru. He intimates that I gave him a letter to Mr. Noyes, our minister in France, in order to facilitate the designs of the *Crédit Industriel*. The subject was never mentioned or dreamed of by me. Mr. Elmore came to me a few days after the shooting of the President and said he was going to Paris, and would be glad if I would give him a note to Mr. Noyes, stating that he had been received by our government. I cheerfully complied with his request, and my understanding was (though I do not say that he directly stated it) that he was visiting Paris to aid the minister from Peru in securing the recognition of the Calderon government by France. By Mr. Elmore's own statement he was simply going abroad to aid Mr. Randall in promoting the interests of a French corporation.

The question of veracity is the last one to be raised between gentlemen. I have not desired to raise it respecting any statement in Mr. Randall's supplementary testimony, except where necessary to my own defense. And even there I perceive a theory, which accounts for the strange misrepresentation of my position made by Mr. Randall. In his conferences with me (which were not so numerous as he thinks, for he mistakes his efforts to see me for actual interviews) the talk was about the condition and prospects of Peru. To Mr. Randall's ears Peru meant the *Crédit Industriel*, and the expression of my desire to preserve the autonomy of Peru meant to him the adoption of the Guillaume programme, protectorate and all, by the Department of State. In short, my interest in the fate of Peru he construed to mean an interest in the *Crédit Industriel*.

This or some other error of judgment may account for Mr. Randall's statement that I was talking to him about the *Crédit Industriel* in a tone directly contrary to that which I was constantly using in my official correspondence. The absence of all possible motive for misleading Mr. Randall relieves me from making any argument on that point. I have no recollection of ever writing a line to Mr. Randall or receiving a line from him. Our intercourse was always polite, was always of his own seeking, was always unimportant, and was never for a single moment confidential. The respect I feel for Mr. Elmore prevents any further expression in regard to his position than the sincere regret that he should, as a minister plenipotentiary, have so entirely identified himself with the interest of a private corporation, foreign to his own country, foreign to the country to which he was accredited, and quite as ready, according to Count Montferrand, to aid Chili as aid Peru.

In writing what I trust is my final word on this tiresome subject, I beg to remind your honorable committee that, at the outset of this investigation, prolonged and even vindictive effort was made to prove that the Department of State had favored and endeavored to promote the interests of the Peruvian Company. Many parts of my dispatches were quoted, and a forced and erroneous construction put upon them to prove that they must have been written to help the Peruvian Company. The effort, however, broke down. The chief witness, Mr. Shipherd, became entirely discredited, and five of his counsel, over their own signatures, showed that his testimony on one important point was absolutely false.

As soon as the charge in regard to the Peruvian Company was practically abandoned, or, at least, totally disproved, the accusation about the *Crédit Industriel* was started. It originated with the same men, was plied in large part by the same agencies, and with a singular identity of tactics. The dispatches that, a little while before, meant unmistakably the Peruvian Company, were now perceived to refer, without

doubt, to the *Crédit Industriel*, and though the two interests were opposite and hostile, the flexibility of the dispatches could, in the same paragraph, accurately represent either or both.

Mr. Chairman, two statements that conflict cannot both be true, but our lessons in logic teach us that they can both be false. I submit to you that in this case they have both been proved false.

All that I ask, and I have a right to ask this, is that the foreign policy of the government when I was at the head of the Department of State, shall be judged by its official acts, its official dispatches, its official records. I ask that the true history of great questions shall not be determined by wayside talk, by hearsay of interested parties, by errors of memory, by shreds and patches of idle gossip, by misrepresentations of the malignant, or by misapprehensions of the ignorant.

I am, very respectfully, your obedient servant,

JAMES G. BLAINE.

JULY 20, 1882.

YORK, ME., *July 16, 1882.*

HON. JAMES G. BLAINE:

DEAR SIR: I am in receipt of yours, asking me, as late Special Envoy of the United States to the belligerents in South America, to state my knowledge of certain matters connected with your administration as Secretary of State.

1. From your formal instructions to me and the personal consultations had with you before my departure on that mission, I have never been able to see that there was any ground for misunderstanding or misconstruing your position in regard to the *Credit Industriel*. It has been consistent throughout as I understood it.

You always expressed yourself to me as desirous that the *Credit Industriel* might, if possible, be made useful to Peru in her distress. But you were entirely unwilling that the United States should make the programme of that company a part of their own negotiation or should assume a guarantee of the arrangement which it might make with the Peruvian Government. You did not favor the project of a protectorate over any port of South America. Your idea was to leave Peru free to negotiate with the *Credit Industriel*, and you instructed General Hurlbut and afterwards myself to report the result of such negotiations to the Department. What action might be beyond was necessarily for the decision of the government, and its policy would in all probability have depended largely upon the report made by the minister. As matter of fact, neither General Hurlbut nor myself was ever called upon to take any action in regard to the *Credit Industriel* during our respective missions in South America.

2. As to your designing a war, that supposition is too absurd for serious consideration. If you had any such purpose it was carefully concealed from me, and I left for South America with the impression that I would have completely failed in my mission if I did not succeed in obtaining an amicable settlement of the differences between the belligerents. You will allow me to add that I would have declined the mission if I had thought otherwise. As I understood you, your object was, by the friendly solution of the existing difficulties, to prepare the way for the meeting of the Peace Congress at Washington, when you hoped to establish such relations between the Republics of the two Americas as would prevent the possibility of future war. But for the strange misconception, for which I cannot account, which reached and misled the Chilean Cabinet, through some of the leading and influential papers of the United States, I believe that purpose could have been accomplished under your instructions.

3. In regard to the Cochet and Landreau claims, it is sufficient to say that you rejected the first, absolutely. As to the second, you instructed General Hurlbut to ask, if the proper time for such request should come, that Landreau should be heard before a Peruvian tribunal in support of his claim, and that in case of a peace providing for the cession of Peruvian territory, the condition of his claim should be brought to the attention of Chili and Peru. This instruction, as stated in your dispatch, was made in view of the fact that numerous claims of Europeans for fabulous amounts were being pressed, and you were anxious, as you expressed it, that the resources of Peru should not be exhausted in the settlement of the claims of foreigners to the prejudice of one belonging to an American citizen. This notification would not have interposed an obstacle to the conclusion of a treaty of peace, but would have simply signified to both parties that its provisions could not put aside any rights which Landreau might be found to possess after an impartial judicial investigation.

Under the restrictions of your instructions, General Hurlbut, although himself approving the justice of Landreau's claim in his dispatch of September 14, 1881, never brought it in any way to the consideration of the Peruvian Government. During my mission in South America, I never referred to it, so that in point of fact during your secretaryship the Landreau claim was never mentioned either to the Chilean or Peru-

vian Government by the ministers of the United States. It could not therefore have affected the then pending diplomatic questions in the remotest degree.

Yours, very truly and respectfully,

WM. HENRY TRESCOT.

STATE OF MAINE,
Kennebec, ss:

JULY 21, 1882.

Personally appeared the above-named James G. Blaine and made oath that the printed statement above, by him subscribed, is true.

Before me.

ORVILLE DEWEY BAKER,
Justice of the Peace.

NEW YORK, *July 29, 1882.*

SIR: I have received a copy of the second supplementary statement which, at his request, Mr. Blaine has been permitted to place before your honorable committee for the purpose, as he states, "of replying to various accusations" which he assumes to have been brought against him by me.

In justice to myself and to the facts of the case, I must ask to be allowed to rectify this. I have made no "accusations" against Mr. Blaine. Mr. Blaine, in a previous supplementary statement, thought fit to impugn the accuracy of certain testimony given by me before your honorable committee, and I thereupon obtained permission from your honorable committee to verify the testimony thus impugned. It is no fault of mine if, in corroborating this testimony, facts have come to light which Mr. Blaine seems to regard as in some way reflecting unfavorably upon his "official conduct as Secretary of State."

It was necessary for me, in the discharge of my duties as attorney for the *Crédit Industriel of France*, to see Mr. Blaine frequently and confer with him, as I had seen and conferred with his predecessor in the Department of State. Why Mr. Blaine should have thought it incumbent upon him, in making his first supplementary statement of the 13th June last, to deny that I had such frequent and necessarily confidential interviews with him, I am at a loss to understand. Nor does it matter, since in his second supplementary statement of July 21 Mr. Blaine himself admits that such interviews took place, and confirms the accuracy of my recollection as to the leading incidents of these interviews, alleging only that his conduct and language on these occasions must be interpreted, not by the light of the circumstances in which the interviews occurred, but in conformity with the views which he now entertains as to their probable significance. This will be sufficiently illustrated by Mr. Blaine's reference to an interview which took place between Mr. Blaine, Mr. Elmore, and myself, in April, 1881, on which occasion Mr. Blaine sent to the Navy Department to ascertain the strength of our squadron in the South Pacific.

Of that interview Mr. Blaine thus speaks:

"The incident related by Mr. Randall and Mr. Elmore about my sending to the Navy Department to get an estimate of our naval strength in the South Pacific, with the apparent intention of some warlike demonstration, is very amusing. It needs little comment beyond the following statement:

"JULY 18, 1882.

"In May last, after General Hurlbut was confirmed as minister to Peru, he requested that a naval vessel might be detailed to convey him from Panama to Callao. As private secretary to the Secretary of State at the time, I went to the Navy Department to get a list of the naval vessels in the South Pacific squadron, with their respective locations, with the view of ascertaining the probable time of a vessel being at Panama.

"That occasion, and the subsequent one, when a naval vessel was asked to convey Mr. Trescot from Panama to Valparaíso, were the only times when I heard of our naval strength in the South Pacific being discussed or in any way referred to in the Department of State.

"WALKER BLAINE."

"When the list was brought to me Mr. Randall and Mr. Elmore were in the department, and some remarks were made in an amusing vein about our great naval strength on the South Pacific coast, contrasting it with the seven English iron-clads then on the same station. The fertile imagination and defective memory of Mr. Randall and Mr. Elmore have invested the incident with a significance for which there was never the slightest justification."

Mr. Blaine, it will be seen, admits that at an interview with myself and Mr. Elmore he exhibited to us a list of the naval force of the United States in the South Pacific, which he sent for to the Navy Department, and that we commented together upon it in connection with the strength of "the seven English iron-clads then on the same

station." But he now gives it to be understood that his object in sending for the list was to ascertain at what time a United States man-of-war would probably be at Panama to convey the American minister, General Hurlbut, to Callao. It might be pertinent, were Mr. Blaine under a cross-examination, to inquire why the Secretary of State should have discussed with the Peruvian minister and the attorney of the *Crédit Industriel* of France the question of sending an American minister to Peru in a man-of-war if he was not holding "confidential" relations with them. It might be pertinent, also, to inquire in that case why the Secretary of State should have gone into a contrast of our squadron with the "seven English iron-clads," if no question of a possible collision of policy and interests between the English and the American Governments on issues arising in South America had been raised between himself and his interlocutors. But in vindication of my own version of an incident which Mr. Blaine, while in one breath he calls it "imaginary," in the next breath admits to have occurred precisely as it was stated in my sworn testimony to have occurred, it is sufficient for me now to call the attention of your honorable committee to the fact that the interview referred to took place in April, 1881, some time before General Hurlbut had been named as minister to Peru, and at least seven months before the idea of sending Mr. Trescott to South America was so much as dreamed of.

Whether Mr. Walker Blaine, at the request of his father, did or did not at some subsequent time get a list of our naval vessels with the object he mentions, is a wholly irrelevant and uninteresting question. It is plain that when Mr. Blaine connects the incident of General Hurlbut's request for a war vessel to take him to Callao with the incident I cited, and explained by me, he lays himself open to the imputation either of a "fertile imagination" or of a "defective memory." But I have no wish to follow Mr. Blaine into insinuations and imputations. My chief object in availing myself of the courtesy of your honorable committee is to vindicate my clients, the *Crédit Industriel* of France, against the unfounded assertions of Mr. Blaine, that "the salient feature of the Guillaume programme, its very foundation, indeed, was an American protectorate."

I must be allowed to state once more, as I stated fully in my previous communication to your honorable body, that the programme of the *Crédit Industriel*, called the Guillaume programme, was laid by me before Mr. Evarts early in October, 1880; that it did not call for an American protectorate, and that, in order to create an impression to that effect, Mr. Blaine persistently refers, not to the Guillaume programme, but to a letter addressed to Mr. Evarts by Mr. Suarez and Count de Montferrand in January, 1881, four months subsequent to the presentation and consideration by Mr. Evarts of the Guillaume programme. It is absolutely true, as Mr. Elmore states in his letter submitted by me to your honorable committee, that "the subject of a protectorate was never once discussed, and the word protectorate never once mentioned in any interview between Secretary Blaine and myself or in any interview with Mr. Blaine at which I was present with or without you. I always understood Secretary Blaine to favorably entertain the *Crédit Industriel* programme. He never objected to it for any reason, so far as I know. The proposition discussed was the programme of the *Crédit Industriel* submitted by you to Secretary Evarts, otherwise called Guillaume programme."

Mr. Blaine does not venture to deny this explicitly; but by citing the letter above referred to of Mr. Suarez and Count de Montferrand to Mr. Evarts, he endeavors to put upon Mr. Elmore an imputation of "self contradiction" in a manner which, with this explanation of the facts, I leave it to men of honor and veracity to characterize.

That there may be no further discussion of this subject, however, I beg to submit to your honorable body a translation annexed of a letter stating all the facts in regard to the *Crédit Industriel* and its connection with the Affairs of Peru, and with the negotiations with the United States which has just been addressed by Mr. Guillaume himself to the present Secretary of State of the United States.

I remain, yours, very truly,

ROBT. E. RANDALL.

Hon. CHARLES G. WILLIAMS,
Chairman of the Committee on Foreign Affairs,
House of Representatives, Washington, D. C.

[Translation.]

PARIS, June 30, 1882.

Hon. Mr. FRELINGHUYSEN,
Secretary of State, Washington, D. C.:

SIR: The journals bring me an account of the evidence given by the Hon. Mr. James G. Blaine before the Congressional committee of inquiry in its session of the 13th inst. I should not allow myself to discuss this testimony, even if it seemed to me still more incorrect than it does, if my own name had not been given due publicity in

it, as being the first author of what is called "the programme of the *Crédit Industriel*," and, above all, if the evidence of the ex-Secretary of State did not contain certain allegations which tend to put in a false light acts in which I have participated.

From the language of Mr. Blaine it would appear:

First. That a so-called programme of the *Crédit Industriel*, submitted to the Department of State, was intended to develop a speculation analogous to the claim put forward under the names of Landreau and Cochet.

Second. That the plans of the *Crédit Industriel* depended for their success upon the support of a foreign cabinet—that of Washington.

Third. That this institution had demanded a protectorate of the United States over Peru.

Permit me to state the facts:

(I.) Peru has at different times pressed in Europe, on the markets of France, England, Belgium, and Holland, various loans, based upon pledges of her guano and her nitrates, and amounting altogether to about one thousand million of francs.

Payments on these debts were suspended. At the end of 1875, the French creditors of Peru, having confided to me the defense of their rights, I naturally addressed myself to my own government at the same time that the creditors of the different nationalities separately presented their claims to their own respective governments.

An organization was proposed at London by the Peruvian Government, June 10 1876, but this agreement not having been thought satisfactory by the continental committee of bondholders (and experience has shown that they were right), their committees united to protest and to seek by joint action to secure a surrender of the supplies of guano and nitrates, which were their guarantees, into the charge of a trustee possessing their full confidence—the *Crédit Industriel*.

In order to secure this they relied upon a decree issued November 14, 1873, by the debtor state, which is a decree which conferred upon the holders of the foreign Peruvian debt the formal right themselves to work the guano deposits, in a case of failure to pay the debt. The efforts of the committee resulted in the conclusion of a contract dated January 7, 1880, under which the constitutional government of Peru, duly authorized to that end by the law of Congress, recognized the justice of the demand of the European creditors, and confided to the *Crédit Industriel*, designated as trustees by them, the exploitation of the guano and nitrate deposits, in conformity with the engagement solemnly made in the contract and sanctioned by the decree of 1873.

Meanwhile, war having broken out between Peru and Chili, and Chili showing an intention to take possession of the guano and nitrate deposits without binding herself to respect in their integrity the rights of neutrals, whose incontestable guarantee those deposits were, the continental committees of the Peruvian creditors turned anew to their governments, demanding their good offices and even their direct intervention to protect their threatened interests; but proposing also, in case the chances of war should make this indispensable, to make whatever concessions and sacrifices might be found necessary to allow Peru to pay a reasonable war indemnity to Chili, while leaving to Peru herself a revenue sufficient to meet the needs of her budget.

From this succinct statement of facts, it appears that the *Crédit Industriel*, to which the creditors of Chili and Peru herself, in virtue of the regular contracts, had confided the right to work the guano and nitrate deposits, in order to secure the payment of interest upon the loans guaranteed by those two products, was not engaged in any speculation when it demanded the execution of those contracts, but that it was simply fulfilling its duty toward those who had confided their interests to its keeping, and whose rights, resulting from public loans, were unquestionable and unquestioned by every country in the world, even including Chili.

(II). Pressed by their subjects and citizens, the governments of Europe did not refuse them the required assistance, that assistance being justified by the legitimacy of their claims.

At the same time, naturally fearing that they might disturb certain national susceptibilities, if they should intervene in America, without having previously ascertained the feelings of the government at Washington, the two governments most deeply interested—those of France and of England—invited the United States to enter into an understanding with them as to a common action, in order to put an end to the conflict which was seriously threatening very considerable interests established in the territories of the Pacific Coast.

They were not slow to learn that the government of Washington, laying down as a principle its own right to resolve all the difficulties which might arise with the different republics of the American continent, declined to take any common action with the powers of Europe, and was itself disposed to regulate, by its own action alone, the differences between Chili and Peru.

The English and French Governments, offering no objections to the attitude taken by the United States, the citizens of these two countries naturally felt obliged to treat

with entire respect the rights claimed by the Cabinet at Washington. On this account, sir, and being furthermore convinced that the great Republic would in no case so act as to injure the interests of foreigners, the continental committee of the European creditors of Peru took steps to put themselves, through me, in relation with Mr. Robert E. Randall, and through him in relations with the Department of State of the United States, and submitted to him, together with the contracts which established the rights of the aforesaid creditors, the programme containing the concessions which these creditors were ready to make in order to contribute to the establishment of peace between Chili and Peru.

Could the committees and the *Crédit Industriel* at their request have acted in any other way? No; for in fact, by declaring that they intended to settle all questions on the Pacific alone, the United States prevented the European creditors of Peru from obtaining the protection of their own governments, and by doing this they compelled those creditors to make their rights and their intentions known to the Department of State of the United States, in order that the government at Washington might be enabled neither to meddle nor to impose in the solution of the difficulties on the Pacific which might be prejudicial to the interests of those whom the Washington Government had in some sort interdicted from taking any action independent of its own.

This course was furthermore directed by this special circumstance: that the European creditors were not ignorant of the fact that third parties, calling themselves Americans, were soliciting from the Department of State the protection of interests which were absolutely litigious, and prejudicial to the unquestioned rights urged as proper to be maintained by the aforesaid European creditors.

From these statements it is evident that the *Crédit Industriel* has never sought the intervention of the United States, beyond the support necessary to the success of its claims, but that, on the contrary, it is the United States which obliged the *Crédit Industriel* to communicate its rights to the American Government, since the United States not only raised objections to any direct intervention of the French Government to secure respect for the contracts and conditions of the programme of the French citizens, but even seemed disposed to support claims absolutely prejudicial to the interests of French citizens.

(III). From the moment when, in consequence of the attitude taken by the United States in regard to the Pacific question, Europeans were obliged to leave the care and protection of their rights to the Washington Government, it is clear that they could not fail to give the Washington Government any guarantee it might desire for the accomplishment of the engagement which they declared they were ready to enter into to further the negotiations for peace. Therefore it was that the *Crédit Industriel* insisted on the execution of its contracts; that is to say, on the exploitation of the guano and nitrates, offering to pay the other belligerent certain revenues and war indemnities, and accepted in advance the jurisdiction of the United States under any form it might suit the United States to adopt, either of a protectorate or of a trusteeship, with the hope of leaving the Cabinet of Washington, should it take action in reliance on the promises of the *Crédit Industriel*, in a condition to compel the *Crédit Industriel* to fulfill its promises toward all third parties, and, in case of its failure, to confide the fulfillment of those promises to some one else.

It is therefore incorrect to assert that the *Crédit Industriel* asked the United States to assume the responsibility of its own acts by a protectorate. On the contrary, the *Crédit Industriel*, having absolute confidence in the loyalty of American statesmen, stood ready to accept their jurisdiction in order to give a material guarantee of its obligation directly to fulfill all its engagements.

As to the reproach that the *Crédit Industriel* was seeking to despoil Peru, that will not bear one instant's examination. In the first place, because the contracts, the execution of which the *Crédit Industriel* has demanded, and still demands, were freely granted by Peru herself. In the second place, because the modifications made in those contracts by the programme were simply sacrifices, the object of which was to protect the territorial integrity of that unfortunate country.

This reproach, unintelligible from any other quarter, is particularly unintelligible from Mr. Blaine, who urged the claims of Landreau and Cochet—that is to say, claims the legitimacy of which is more than doubtful, and the recognition of which, if imposed on Peru, must have deprived the Peruvian Government of all hope of finding the resources necessary to the liberation of its territory, and to the future restoration of its credit—since it would be left without means to satisfy its European creditors.

Finally, then, by reserving to himself the exclusive arbitrament between Peru and Chili, Mr. Blaine made the United States guarantors of all the legitimate interests of European citizens and subjects in those countries; and, therefore, if in this whole business there is, as the ex-Secretary of State asserts, "something extraordinary and without precedent in diplomatic annals," it is not the fact that Europeans have ad-

addressed themselves to the Washington Government; it is the fact that Mr. Blaine obliged the Europeans so to address themselves by undertaking to prevent those governments from directly protecting them.

I beg you, Mr. Secretary of State, to accept the assurance of the distinguished sentiments with which I have the honor to be, your excellency's very respectful servant,

A. GUILLAUME,

President of the French Committee of Peruvian Bondholders.

40 RUE DE BERLIN, PARIS.

○

CHILI-PERU.

AUGUST 5, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. WILSON, from the Committee on Foreign Affairs, submitted the following as the

VIEWS OF THE MINORITY:

In the matter of the Chilian-Peruvian investigation.

By resolution adopted by the committee, Messrs. Wilson, Rice, Blount, and the chairman were appointed a subcommittee to revise the testimony of Jacob R. Shipherd and report what questions, if any, which he refused to answer, should be insisted upon.

Mr. WILSON, of the said subcommittee, submitted the following as his views:

That on February 24, 1882, the following preambles and resolution were adopted by the House of Representatives, and by it referred to the Committee on Foreign Affairs:

Whereas it is alleged, in connection with the Chili-Peruvian correspondence recently and officially published upon the call of the two houses of Congress, that one or more ministers plenipotentiary of the United States were either personally interested or improperly connected with business transactions in which the intervention of this government was requested or expected; and

Whereas it is further alleged that certain papers in relation to the same subjects have been improperly lost or removed from the files of the State Department: Therefore,

Resolved, That the Committee on Foreign Affairs be, and they are hereby, instructed to inquire into the said allegations, and ascertain the facts relating thereto, and report the same, with such recommendations as they may deem proper, and they shall have power to send for persons and papers.

And that on — the following supplementary resolution was adopted by the House and was also referred to said committee:

Resolved, That the Committee on Foreign Affairs be directed to demand from Jacob R. Shipherd, of New York, copies of all correspondence between himself and any person or persons whatsoever, and all papers and other evidence in his possession tending to show what said Shipherd did, or attempted to do, to enforce the claim of the Peruvian Company, or to induce the United States to enforce this claim against Peru.

That under and by virtue of this supplementary resolution, the committee have examined on oath the said Shipherd and caused his evidence to be reduced to writing.

That during the examination of said Shipherd, various questions were propounded to him, and copies of correspondence and papers and other evidence referred to were demanded, the object being to show "what said Shipherd did, or attempted to do, to enforce the claim of the Peruvian Company, or to induce the United States to enforce this claim against Peru."

Some of the questions so propounded he declined to answer and some of the papers so demanded he refused to produce, claiming that the correspondence and papers called for are merely private papers into which the House of Representatives has no power to inquire.

In obedience to the direction of the House, contained in the supplementary resolution, the chairman, with the assent of the committee, propounded to Shipherd the following questions, to which the respective answers were made by the witness:

Question. I am directed by the committee to put to you the following question: The Committee on Foreign Affairs are directed, by order of the House, to demand from you copies of all correspondence between yourself and any person or persons whomsoever, and all papers and other evidences in your possession tending to show what you did, or attempted to do, to enforce the claim of the Peruvian Company, or to induce the United States to enforce this claim against Peru. Are you now prepared to furnish the documents here called for?—Answer. I am not.

Q. Are you prepared to furnish, and will you furnish, all papers and other evidences in your possession tending to show what you did, or attempted to do, to enforce the claim of the Peruvian Company, or to induce the United States to enforce this claim against Peru?—A. I will not.

Q. Do you positively decline to produce the papers and evidences called for?—A. I do.

It does not appear from anything on the face of the supplementary resolution, nor of the resolution of February 24, that the correspondence, papers, or other evidence referred to, is of the character which this committee have any general or special power to inquire into, nor has anything been offered to show *prima facie* that it is so.

The power of the House to punish a contumacious witness for contempt in failing or refusing to answer questions propounded by the House, or one of its committees acting on its authority, can only be derived from the Constitution of the United States.

The power of the House to punish a recusant witness has heretofore been discussed by the House, and its action subsequently passed upon by the Supreme Court of the United States.

The first case to which your committee refer is that of Anderson against Dunn, decided by the Supreme Court of the United States in 1821, reported in 6 Wheaton, 204. Anderson had been found guilty by the House of a breach of its privileges and of a high contempt of its dignity and authority. He instituted suit against Dunn, who was then the Sergeant-at-Arms of the House, for false imprisonment. Dunn justified under the warrant of the House of Representatives directed to him as its Sergeant-at-Arms. Neither the pleadings nor the proof disclosed what the breach of the privileges of the House, or the high contempt was, and in the absence of any information upon this subject, the court held that the order of the House was conclusive; that it could not presume, in the absence of any proof to the contrary, that the House had violated its authority or exceeded its jurisdiction.

The second case to which your committee refer is of more recent date, that of Hallet Kilbourn against John G. Thompson and others, decided by the Supreme Court of the United States, reported in Otto, XIII.

The House of Representatives, on January 24, 1876, recited by preamble that the United States was a creditor of the firm of Jay Cooke & Co., then in bankruptcy by order and decree of the district court of the United States for the eastern district of Pennsylvania; that they had a large and valuable interest in what was known as the real-estate pool in the city of Washington; that a settlement thereof had been made by the trustee of the said firm to the disadvantage and loss of the creditors of the said Jay Cooke & Co., including the Government of the

United States, and that the courts being powerless by reason of the settlement to afford adequate relief to the creditors, adopted the following resolution :

Resolved, That a special committee of five members of this House, to be selected by the Speaker, be appointed to inquire into the nature and history of said real-estate pool, and the character of said settlement, with the amount of property involved, in which Jay Cooke & Co. were interested, and the amount paid or to be paid in said settlement, with power to send for persons and papers, and report to this House.

Under this resolution a committee of five gentlemen were appointed, with Hon. John M. Glover as chairman. Kilbourn was summoned and examined as a witness before that committee, and upon his examination touching matters relating to said real-estate pool, the following question was propounded to him :

Will you state where each of the five members reside, and will you please state their names ?

This question Kilbourn refused to answer. He was also ordered by the committee to bring with him and produce before the committee certain records, papers, and maps relating to the said inquiry, which he refused to produce. His refusals were reported to the House by the committee, who reported that the efficient prosecution of the inquiry ordered by the House required that Kilbourn should answer the question aforesaid, and produce the records, papers, and maps called for. Kilbourn was accordingly set to the bar of the House, and there persisted in his refusal. Thereupon, by order of the House, he was recommitted to the custody of the said John G. Thompson, Sergeant-at-Arms, to be kept in his custody in the common jail of the District of Columbia until he should communicate to the House through the said committee that he was ready to appear before it to answer the said question and produce said papers; and the Speaker issued his warrant accordingly. Kilbourn was accordingly recommitted to the custody of the said Thompson, Sergeant-at-Arms, and was by him lodged in the jail of the District aforesaid, where he was detained in custody forty-five days, and until released from imprisonment upon a writ of *habeas corpus* issued by the Hon. David K. Cartter, chief justice of the supreme court of the District of Columbia.

Subsequently Kilbourn instituted an action for trespass for false imprisonment, in the supreme court of the said District of Columbia against the said Thompson (then Sergeant-at-Arms), Michael C. Kerr (then Speaker), John M. Glover and other members of the committee. The parties pleaded the general issue. Thompson filed his separate special pleas in justification, admitting the arrest of Kilbourn and the lodgment of him in jail; also alleging that he used no more force than was necessary; that what he did was done as Sergeant-at-Arms of the House and by virtue of its warrant and order. Kerr died and the suit was dismissed as to him.

The other defendants pleaded jointly the general issue, and a plea of justification similar to Thompson's, except that they alleged themselves to have been members of the House of Representatives, and members of a committee of that House, and that what they did was in that capacity, and was warranted by the circumstances, which they fully set out in the plea.

Kilbourn demurred to the special pleas, and the court overruled the demurrer and judgment was rendered for the defendants. He subsequently obtained a writ of error from the Supreme Court of the United

States. This court, in reviewing the question, uses the following language:

The House of Representatives has the sole right to impeach officers of the government, and the Senate to try them. Where the question of such impeachment is before either body acting in its appropriate sphere on that subject, we see no reason to doubt the right to compel the attendance of witnesses, and their answer to proper questions, in the same manner and by the use of the same means, that courts of justice can in like cases.

Whether the power of punishment in either house by fine or imprisonment goes beyond this or not, we are sure that no person can be punished for contumacy as a witness before either house, unless his testimony is required in a matter into which that house has jurisdiction to inquire, and we feel equally sure that neither of these bodies possesses the general power of making inquiry into the private affairs of the citizen.

It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers entrusted to governments, whether State or national, are divided into three grand departments of the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system, that the persons entrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other.

* * * * *

In looking to the preamble and resolution under which the committee acted, before which Mr. Kilbourn refused to testify, we are of the opinion that the House of Representatives not only exceeded the limit of its own authority, but assumed a power which could only be properly exercised by another branch of the government, because the power was in its nature clearly judicial.

The Constitution declares that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain. If what we have said of the division of the powers of the government among the three departments be sound, this is equivalent to a declaration that no judicial power is vested in the Congress or either branch of it, save in the cases specifically enumerated to which we have referred. We do not, after what has been said, deem it necessary to discuss the proposition that if the investigation which that committee was directed to make was one that was judicial in its character, and which could only be properly and successfully made by a court of justice, and if it related to a matter in which relief or redress could be had only by a judicial proceeding, that the power attempted to be exercised was one confided by the Constitution to the judicial and not to the legislative department of the government. We think it equally clear that the power asserted is judicial and that it is *not* legislative.

* * * * *

The preamble to the resolution recites that the Government of the United States is a creditor of Jay Cooke & Co., then in bankruptcy in the district court of the United States for the eastern district of Pennsylvania.

If the United States is a creditor of any citizen, or of any one else on whom process can be served, the usual, the only legal, mode of enforcing payment of the debt is by a resort to a court of justice. For this purpose, among others, Congress has created courts of the United States, and officers have been appointed to prosecute the pleas of the government in these courts.

The district court for the eastern district of Pennsylvania is one of them, and, according to the recital of the preamble, had taken jurisdiction of the subject-matter of Jay Cooke & Co.'s indebtedness to the United States, and had the whole subject before it for action at the time the proceeding in Congress was initiated. That this indebtedness resulted, as the preamble states, from the improvidence of a Secretary of the Navy does not change the nature of the suit in the court nor vary the remedies by which the debt is to be recovered. If, indeed, any purpose had been avowed to impeach the Secretary, the whole aspect of the case would have been changed. But no such purpose is disclosed. None can be inferred from this preamble, and the characterization of the conduct of the Secretary by the term improvident, and the absence of any words implying suspicion of criminality repel the idea of such purpose, for the Secretary could only be impeached for "high crimes and misdemeanors."

* * * * *

The resolution adopted as a sequence of this preamble contains no hint of any intention of final action by Congress on the subject. In all the argument of the case no

suggestion has been made of what the House of Representatives or the Congress could have done in the way of remedying the wrong or securing the creditors of Jay Cooke & Co., or even the United States. Was it to be simply a fruitless investigation into the personal affairs of individuals? If so, the House of Representatives had no power or authority in the matter more than any other equal number of gentlemen interested for the government of their country. By fruitless we mean that it could result in no valid legislation on the subject to which the inquiry referred.

What was this committee charged to do?

To inquire into the nature and history of the real-estate pool. How indefinite! What was the real-estate pool? Is it charged with any crime or offense? If so, the courts alone can punish the members of it. Is it charged with a fraud against the government? Here, again, the courts, and they alone, can afford a remedy.

For these reasons, among others, the court reversed the judgment of the court below, overruled the demurrers, and remanded the case for trial. Subsequently Kilbourn recorded a verdict for \$100,000 damages, which verdict has been set aside for the reason that the damages were excessive.

Now, looking to the supplementary resolution in question, in the light of the decision in the Kilbourn case, it becomes necessary to determine to what extent, if at all, the order of the House contained in that supplementary resolution is in conflict with that decision.

The Committee on Foreign Affairs are directed to demand of Jacob R. Shipherd copies of all correspondence between himself and any person or persons, whatsoever, and all papers and other evidence in his possession tending to show what said Shipherd did, or attempted to do, to enforce the claims of the Peruvian Company, or to induce the United States to enforce these claims against Peru. Now, if the copies of the correspondence and papers, and other evidence referred to, relate to the private affairs of Shipherd, or the private affairs of his company or counsel, it is respectfully suggested that this committee have not the authority to demand their production, nor the House the authority to punish the witness for contempt for refusing to produce them. In the case last noted, the court, in referring to the two Houses of Congress, say, quoted above:

We feel equally sure that neither of those bodies possess the general power of making inquiry into the private affairs of a citizen.

It is a bootless question to this inquiry as to what Shipherd did to enforce the demands of the Peruvian Company, or to induce the government of the United States to enforce them against Peru, provided his action was not treasonable or was not in some manner improperly connected with some minister plenipotentiary, or with some other officer of the government. While the decision in the Kilburn case does not settle definitely every possible question as to the extent of the power of the House of Representatives, enough is determined by it to enable the committee to come to a conclusion upon this subject. Briefly stated, the facts are as follows:

Chili and Peru had been engaged in war. Peru was overrun by the Chilean forces. Peru was anxious to preserve her territory and pay Chili a money indemnity. A French corporation, the Société Générale de Crédit Industriel et Commercial was anxious to furnish the money, provided Peruvian guano and nitrate beds could be left in the hands of Peru to guarantee their safety for advancements made and to be made. An American company known as the Peruvian Company likewise proposed to furnish the Chilean money indemnity to Peru if Peruvian territory could be preserved to her with which she was to secure said company for the moneys advanced, and an old claim amounting to \$1,000,000,000. It was gravely charged in portions of the press

of the country that some one or more American ministers had used their official influence and position to advance the interests of these companies with a view to their own personal advantage. It was likewise alleged that members of Congress were induced to serve the Peruvian Company for reward, contrary to their official duty, or rather when their official duty made it improper for them to contract with said company at all. It was also alleged that the Hon. James G. Blaine, an Ex-Secretary of State, contrary to his official duty, had, when Secretary, co-operated with one or the other of these companies by a policy of compelling Chili to accept a money indemnity, provided Peru contracted with one or the other of these companies for the said indemnity, and the same was accordingly furnished. It has not at any time been supposed that the correspondence of the Peruvian Company would throw any light upon the conduct of the *Crédit Industriel*. Since this investigation commenced Stephen A. Hurlbut has died; General Judson Kilpatrick, the minister to Chili, is also dead. Hon. James G. Blaine is not holding any office under the United States. Hon. H. W. Blair, a Senator of the United States, is the only member of Congress suspected of having been in the service of either of the companies aforesaid.

Under the decision of the Supreme Court above cited the facts of this case give jurisdiction of this matter only with a view to the impeachment of some one of the officers named. The deaths of Generals Hurlbut and Kilpatrick prevent any impeachment proceedings as to them. The fact that Mr. Blaine is not an officer of the United States is believed to bar any attempt to impeach him. Mr. Blair is not a member of the House of Representatives, and it has no jurisdiction over any supposed conduct of his. In the case cited the Supreme Court clearly indicate the opinion that if the impeachment of the Secretary had been suggested the House would have had the right to compel Kilbourn to answer its questions. With this element omitted, it was merely an inquiry into the private affairs of the real-estate pool. So it would seem that the demand for Shipherd's papers degenerates into an inquiry into the private affairs of the citizen. If this is true, we cannot demand his papers nor compel him to answer questions. If this is true, we are pursuing an inquiry inhibited by the Constitution of the United States. If the witness may answer what he pleases and refuse to answer what he pleases, the investigation is a farce unworthy of the House of Representatives, and the sooner ended the seemlier. If the investigation is an attack on any officer for partisan purposes, it is unwarranted. The House of Representatives has ordered the Committee on Foreign Affairs to demand the aforesaid papers of Shipherd. This was before Mr. Hurlbut's death, when his impeachment was possible. Believing that the facts now existing make it improper to demand Shipherd's papers, we respectfully recommend that Shipherd be discharged, and his examination proceeded with no further.

GEORGE F. BICKNELL.

AUGUST 2, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GEORGE R. DAVIS, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 178.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 178) for the relief of George F. Bicknell, having considered the same, respectfully report:

This bill provides for the removal of the charge of dismissal now standing upon the records of the War Department against the name of George F. Bicknell, late a captain in the Third Regiment Rhode Island Volunteer Cavalry, and authorizes the Secretary of War to grant said officer an honorable discharge from the service.

It appears from an examination of the evidence in this case and the records of the department that Captain Bicknell was mustered into the service September 30, 1863, as a first lieutenant, Third Regiment Rhode Island Volunteer Cavalry, and as captain to date from December 21, 1863.

It appears that he served faithfully, and even gallantly, until the close of the war, participating in all of the campaigns and in every engagement in which the regiment took part. He was complimented by his commanding officer on the field for gallant conduct at the battle of Pleasant Hill and at the engagement at Campti, La.

It further appears from the evidence that the record of this officer and that of his company was excellent clear through to the close of active hostilities; good discipline, an efficient and well-drilled company, and gallant conduct were characteristics of both officers and men; and that the company took high rank in the command.

It further appears that, subsequent to the cessation of active hostilities, this officer, with his company, was detached from his regiment and placed on duty in one of the parishes of Louisiana, far removed from any superior military headquarters, and with little strictly military duty to perform; and that, not relishing this character of service, the war being over, he tendered his resignation on the 24th June, 1865, alleging, as one of the reasons therefor, the greatly reduced strength of his company and regiment, his company, by details and otherwise, having remaining in it for duty what he termed as only a lieutenant's command. It appears that his resignation, having been received at regimental headquarters, was forwarded with the "request that it be accepted for the good of the service, this officer being incompetent and worthless." The resignation was so accepted, and the officer dismissed from the service.

There appears to be no charge against this officer and no criticism of his conduct up to the time his resignation was received at his regimental headquarters.

On the strength of the indorsement he was arbitrarily dismissed the service without a hearing, without a court-martial, without an investigation.

The officer was a young man, and apparently did not know his own rights at the time of dismissal, or he would have demanded an investigation, court-martial, or filed some protest, which the evidence does not disclose as having been done.

In justice to the officer commanding the regiment at the time the indorsement was placed upon Captain Bicknell's resignation, which thereby caused his summary dismissal, it is proper to state that he had but recently joined the command, and had no personal knowledge of the gallant and meritorious conduct of this officer or that of his company during active hostilities and while the command was in the field.

Your committee are of the opinion that an injustice has been done this officer, and that his resignation, if accepted at all, should have been honorably accepted. They therefore report the bill H. R. 178 back to the House with recommendation that it do pass.



ENSIGN L. K. REYNOLDS.

AUGUST 2, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. C. G. WILLIAMS, from the Committee on Foreign Affairs, submitted the following

REPORT:

[To accompany H. Res. 284.]

The Committee on Foreign Affairs, to whom was referred certain correspondence relative to an award of the decoration of the Royal and Imperial Order of Francis Joseph to Ensign L. K. Reynolds, U. S. N., by the Austrian Government, having had the same under consideration, submit the following report and accompanying joint resolution, the passage of which they recommend.

It appears that Ensign Reynolds, at imminent peril to himself, during a furious gale, November 24, 1879, rescued the crew of the Austrian bark *Olivo*, in the vicinity of the Azores; that in recognition of this heroic act the Austrian Government awarded to Ensign Reynolds the aforesaid decoration, and he is desirous of accepting it; that the Secretary of State has transmitted all the correspondence, showing, in the opinion of the committee, sufficient reason why the proper resolution of Congress should be passed allowing the decoration to be accepted.

PUBLIC BUILDING AT MONTPELIER, VT.

AUGUST 2, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. LEWIS, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 6887.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 5390) for the erection of a public building at Montpelier, Vt., would respectfully report:

That they find Montpelier (the capital of the State of Vermont) a thriving city of 3,219 inhabitants, showing an increase since 1870 of about 300; her post-office receipts for 1879 were \$10,589; for 1880, \$11,218; and for 1881, \$11,324.

The internal revenue collections for 1879 were \$50,159; for 1880, \$50,545; and for 1881, \$53, 145.

The government is now paying an annual rental for post-office accommodations the sum of \$1,000, and for internal revenue office about \$200, and are receiving inadequate accommodations therefor. We further find the city well accommodated with railroad facilities, and quite a manufacturing center.

In consideration of the foregoing facts, your committee would recommend the passage of substitute for the original bill herewith returned, limiting the cost of the building and grounds, when completed, to a sum not exceeding \$60,000.

PUBLIC BUILDING AT BRATTLEBOROUGH, VT.

AUGUST 2, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. LEWIS, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 6788.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 6788) to provide for the erection of a public building in the town of Brattleborough, in the State of Vermont, would report as follows :

Brattleborough contained in 1870 4,900, and in 1880, 5,282 inhabitants. The post-office receipts for the last year were, gross, \$12,863; net, \$7,533.

Internal revenue collected there for the year 1881 amounted to \$53,145.83.

Rents paid by the government during the last year were about \$400, not including the expenses of United States Judge Wheeler sitting at chambers a number of times each year in parlors of hotel.

UNITED STATES CUSTOMS.

Comparative statement of business transacted in the customs district of Vermont, during the years 1880 and 1881.

	1880.	1881.
Duties on imports	\$914, 193 79	\$912, 031 93
Duties on warehouse withdrawals		551, 014 87
Duties on rewarehouse withdrawals	2, 767 69	102, 956 87
Fines, penalties, &c	5, 208 24	1, 572 35
Marine hospital dues	219 53	236 18
Tonnage tax.....	3, 866 25	4, 175 34
Steamboat fees.....	828 65	1, 120 85
Official fees.....	31, 305 50	30, 356 85
Miscellaneous fees.....	6, 197 02	6, 473 02
Total collections.....	964, 586 67	1, 114, 038 26

Showing an increase during the year 1881 over that of 1880 of \$149,451.59.

General statement of business transacted during 1881.

	Number of entries.	Value.	Duties.
Merchandise entered free of duty	10, 226	\$1, 376, 435	.....
Merchandise entered for immediate consumption on which duties were paid.....	11, 995	4, 260, 283	\$912, 031 93
Merchandise withdrawn from warehouse on which duties were paid.....	103	376, 362	158, 071 74
Merchandise entered in bond for transportation to other dis- tricts.....	970	784, 740	307, 818 63
Merchandise entered in bond for exportation.....	577	916, 993	346, 027 51
Totals.....	23, 871	7, 714, 813	1, 723, 949 81

Value of domestic merchandise exported, \$1,576,181; number of cars laden with merchandise in transit through Canada, 782,499.

Statement showing the chief articles imported during 1881.

ARTICLES FREE OF DUTY.

Hemlock bark, cords, 61,640.....	\$331, 202
Eggs, dozens, 2,312,206.....	335, 717
Household effects.....	245, 269
Hides.....	117, 755
Railroad ties, logs, telegraph poles, and other unmanufactured wood.....	140, 278
United States products returned.....	40, 690
Fish, product of Canadian fisheries.....	12, 601
Fowls.....	36, 697
All other articles.....	116, 226
Total free goods.....	1, 376, 435

Articles on which duties were paid entered for immediate consumption.

	Value.	Duties.
Wool, pounds, 375,885.....	\$101, 484	\$49, 784 07
Cattle, 3,149.....	41, 427	8, 285 40
Horses, 7,918.....	783, 160	156, 632 00
Sheep and lambs, 63,715.....	177, 390	35, 478 00
Lumber, boards, &c., 104,718,841 feet.....	1, 149, 549	200, 215 94
Other lumber.....	114, 720	23, 785 64
Grain, 198,031 bushels.....	170, 257	26, 283 82
Potatoes, 330,763 bushels.....	134, 626	49, 614 50
Butter, 490,357 pounds.....	97, 649	19, 614 28
Hay, 87,488 tons.....	1, 027, 833	205, 566 60
Copper ore, 1,002,699 pounds.....	103, 545	30, 080 97
Extract hemlock bark.....	29, 659	5, 931 80
All other articles.....	328, 984	100, 758 91
Total.....	4, 260, 283	912, 031 93
WITHDRAWN FROM WAREHOUSE.		
Steel blooms, 38,820,400 pounds.....	342, 730	153, 693 78
Lumber, boards, &c., 7,188,980 feet.....	33, 632	4, 377 96
Total duties received.....	4, 636, 645	1, 070, 103 67

Your committee would therefore recommend the passage of said bill, the building and grounds not to cost the government when completed to exceed the sum of \$40,000.

PUBLIC BUILDING AT PROVIDENCE, R. I.

AUGUST 2, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. LEWIS, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 5566.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 5566) to authorize the Secretary of the Treasury to purchase land adjacent to the custom-house, in the city of Providence, R. I., having considered the same, respectfully report:

The city of Providence is the capital of the State of Rhode Island, and the business center, not only of the manufacturing and business interests of that State, but also of a considerable portion of New England. The increase of its population has been steady and continuous. In 1860 its population was 50,666; in 1880, it had increased to 104,857; and is now estimated at about 112,000.

Providence is, and long has been, the second city in population in New England; and its large, numerous, and varied industries and interests abundantly entitle it to the same rank upon the basis of business and material prosperity.

The old custom-house in Providence is an ancient two and one-half story building, only about 40 by 40 feet square, which many years ago ceased to be at all adequate for the requirements of the increasing business of that port, and has been and is used for a bonded warehouse.

Twenty-five years ago, when the population of Providence was less than half of what it now is, and when its business, both public and private, was of a much less proportion, a government building was erected there, upon a lot of land about 60 by 134 feet, which building has since been occupied for post-office, custom-house, internal-revenue office, United States courts, and the necessary offices of officials connected therewith, but has long failed to furnish much-needed accommodations for a largely increasing government business.

The amount and increase of that business are presented and illustrated in the following statements, viz:

POST-OFFICE BUSINESS.

Receipts in 1860.....	\$38,755 55
Receipts in 1870.....	91,626 49
Receipts in 1879.....	127,165 24
Receipts in 1880.....	143,711 45
Receipts in 1881.....	160,266 56

Number of pieces of mail matter handled in 1874, 2,273,326 ; in 1881, 6,003,302; number of pouches now handled daily, 398.

Money orders issued and paid during quarter ending December 31, 1881, \$198,564.43, being an increase of \$21,273.34 over the money-order business of same quarter in 1880.

Internal-revenue receipts in 1881, \$209,079.27.

Custom-house receipts, during year May 1, 1881, to April 30, 1882, inclusive, \$196,236.03.

Total receipts from customs, internal revenue, and post-office, exclusive of money-order business, at Providence, during past year, \$564,581.86.

Said government building is situated in a closely built locality, in the central part of the city, and, together with its sidewalks, covers the entire lot, belonging to the United States, upon which it stands. It admits of no enlargement, except at great cost for the purchase of valuable adjoining property mostly covered with large and expensive buildings.

The land proposed to be purchased is adjacent to said old custom-house, at the head of navigation of Narragansett Bay ; has no buildings upon it of a specially valuable character ; is admirably located for the site for a custom-house, and can be acquired at this time for a reasonably moderate cost.

Your committee, being satisfied that the extent and continuous growth of the government business in Providence demand immediate increase of facilities for its transaction, and that prompt action is both desirable and in the interest of economy, recommend the passage of the accompanying bill.



WILLIAM MOSS.

AUGUST 2, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUCHANAN, from the Committee on Claims, submitted the following

R E P O R T :

[To accompany bill H. R. 6888.]

The Committee on Claims, to whom was referred the petition asking an appropriation to pay William Moss for additional mail services, submit the following report :

The petition of William Moss shows that he entered into a contract with the United States to carry the mail in two-horse coaches on route 7600 for the sum of \$6,300 per annum from the 1st day of July, 1854, to the 30th day of June, 1858, from Washington, Ark., to Clarksville, Tex., three times a week and back, all of which appears from a certified copy of the contract, which is hereto attached and made a part of this report. That about one year after the claimant commenced the performance of his contract, as appears from the affidavit of the claimant, William Moss, and the affidavit of J. L. Phillips, the postmaster at Washington, Ark., and also the affidavits of Matthew Moss, Richard Booker, and a second affidavit of William Moss, the claimant, which affidavits are attached and made a part of this report, the service has largely increased, so that claimant was compelled to run four-horse coaches instead of two-horse coaches, causing great loss to claimant on his contract.

Your committee believe that, in justice, claimant is entitled to additional compensation, in a sum not less than \$3,500, and therefore report a bill to pay to claimant the sum of \$3,500, and recommend that said bill do pass.

UNITED STATES OF AMERICA,
POST OFFICE DEPARTMENT,
Washington, D. C., February 13, 1874.

I, John A. J. Creswell, Postmaster-General of the United States of America, certify that the annexed is a true copy of the original contract now on the files of this department.

In testimony whereof, I have hereto set my hand, and caused the seal of the Post Office Department to be affixed, at the General Post Office, in the City of Washington, the day and year above written.

[SEAL.]

JNO. A. J. CRESWELL,
Postmaster-General.

WASHINGTON, HEMPSTEAD CO., ARKS.

No. 7600. \$6,300 per annum.

This article of contract, made the twenty-ninth day of April in the year one thousand eight hundred and fifty-four, between the United States (acting in this behalf by their Postmaster-General) and Wm. Moss and Charles B. Mitchel & Hezekiah W. Smith, witnesseth,

That whereas William Moss has been accepted according to law as contractor for transporting the mail on route No. 7600 from Washington, Ark., by Columbus, Saline, Brownstown, Paracrafta, Rocky Comfort, Mill Creek, Texas, and Almond Grove to Clarksville and back three times a week, in two-horse coaches, at six thousand three hundred dollars per year for and during the term commencing the first day of July, in the year one thousand eight hundred and fifty-four, and ending with the thirtieth day of June, in the year one thousand eight hundred and fifty-eight: Now, therefore, the said William Moss, contractor, and Charles B. Mitchel & Hezekiah W. Smith, his sureties, do jointly and severally undertake, covenant, and agree with the United States, and do bind themselves—

1st. To carry said mail within the times fixed in the annexed schedule of departures and arrivals, except that when more than seven minutes are taken for opening and closing the mails at any office, the surplus time so taken is to be allowed in addition to what is given in the schedule; and so carry until said schedule is altered by the authority of the Postmaster-General of the United States, as hereinafter provided, and then to carry according to said altered schedule: 2d. To carry said mail in a safe and secure manner, free from wet or other injury, in a boot under the driver's seat, and in preference to passengers, and to their entire exclusion if its weight and bulk require it. 3d. To take the mail and every part of it from, and deliver it and every part of it at, each post-office on the route, or that may hereafter be established on the route, and into the post-office at each end of the route, and into the post-office at the place at which the carrier stops at night, if one is there kept, and if no office is there kept, to lock it up in some secure place at the risk of the contractor.

They also undertake, covenant, and agree with the United States, and do bind themselves, jointly and severally as aforesaid, to be answerable for the person to whom the said contractor shall commit the care and transportation of the mail, and accountable to the United States for any damages which may be sustained by the United States through his unfaithfulness or want of care; and that the said contractor will discharge any carrier of said mail, whenever required to do so by the Postmaster-General; also, that he will not transmit by himself or his agent, or be concerned in transmitting commercial intelligence more rapidly than by mail, and that he will not carry out of the mail, letters or newspapers which should go by post; and further the said contractor will convey, without additional charge, post-office blanks, mail bags, and the special agents of the department, on the exhibition of their credentials.

They further undertake, covenant, and agree with the United States, that the said contractor will collect quarterly if required by the Postmaster-General, of postmasters on said route, the balances due from them to the General Post-Office, and faithfully render an account thereof to the Postmaster-General in the settlement of quarterly accounts, and will pay over to the General Post-Office all balances remaining in his hands.

For which services, when performed, the said William Moss, contractor, is to be paid by the said United States the sum of six thousand three hundred dollars a year, to wit: Quarterly in the months of May, August, November, and February, through the postmasters on the route, or otherwise, at the option of the Postmaster-General of the United States: said pay to be subject, however, to be reduced or discontinued by the Postmaster-General, as hereinafter stipulated, or to be suspended in case of delinquency.

It is hereby stipulated and agreed, by the said contractor and his sureties, that the Postmaster-General may alter the contract, and alter the schedule, he allowing a pro rata increase of compensation within the restrictions imposed by law for the additional service required, or for the increased speed, if the employment of additional stock or carriers is rendered necessary; but the contractor may, in case of increased expedition, relinquish the contract on timely notice, if he prefer it to the change; also that the Postmaster-General may discontinue or curtail the service, in order to place on the route a greater degree of service or whenever the public interests require such discontinuance or curtailment for any other cause, he allowing one month's extra pay on the amount of service dispensed with.

It is hereby also stipulated and agreed, by the said contractor and his sureties, that in all cases there is to be a forfeiture of the pay of a trip when the trip is not run, and of not more than three times the pay of the trip when the trip is not run and no sufficient excuse for the failure is furnished; a forfeiture of at least one-fourth part of it when the running is so far behind time as to lose connection with a depending mail;

and a forfeiture of a due proportion of it when a grade of service is rendered inferior to the mode of conveyance above stipulated; and that these forfeitures may be increased into penalties of higher amount, according to the nature or frequency of the failure, and the importance of the mail; also, that fines may be imposed upon the contractor, unless the delinquency be satisfactorily explained to the Postmaster-General in due time, for failing to take from or deliver at a post-office the mail, or any part of it; for suffering it to be wet, injured, lost, or destroyed; for carrying it in a place or manner that exposes it to depredation, loss or injury, by being wet, or otherwise; for refusing, after demand, to convey a mail by any coach which the contractor regularly runs or is concerned in running on the route, beyond the number of trips above specified; or for not arriving at the time set in the schedule. And for setting up or running an express to transmit letters or commercial intelligence in advance of the mail, or for transporting knowingly, or after being informed, any one engaged in transporting letters or mail matter in violation of the laws of the United States, a penalty may be exacted of the contractor equal to a quarter's pay; but in all other cases no fine shall exceed three times the price of the trip. And whenever it is satisfactorily shown that the contractor, his carrier or agent, has left or put aside the mail, or any portion of it, for the accommodation of passengers, he shall forfeit not exceeding a quarter's pay.

And it is hereby stipulated and agreed, by the said contractor and his sureties, that the Postmaster General may annul the contract for repeated failures; for violating the Post-Office laws; for disobeying the instructions of the department; for refusing to discharge a carrier when required by the department; for assigning the contract without the consent of the Postmaster-General; for setting up or running an express as aforesaid; or for transporting persons conveying mail matter out of the mail, as aforesaid; or whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress; and this contract shall, in all its parts, be subject to the terms and requisitions of an act of Congress passed on the twenty-first day of April, in the year of our Lord one thousand eight hundred and eight, entitled "An act concerning public contracts."

In witness whereof, the said Postmaster-General has caused the seal of the Post-Office Department to be hereto affixed, and has attested the same by his signature, and the said contractor and his sureties have hereunto set their hands and seals the day and year set opposite their names respectively.

[SEAL.]

JAMES CAMPBELL,
Postmaster-General.

Signed, sealed, and delivered, by the Postmaster-General, in the presence of—
R. T. SPOTTSWOOD, 16 Aug't, '54.

WILLIAM MOSS. [SEAL.] June 22d, 1854.

CHARLES B. MITCHEL. [SEAL.] June 22d, 1854.

HEZEKIAH W. SMITH. [SEAL.] June 22d, 1854.

And by the other parties hereto, in the presence of—

RICH'D B. PARDOM.

R. L. PHILLIPS.

I hereby certify that I am well acquainted with Charles B. Mitchel and Hezekiah W. Smith, and the condition of their property, and that after full investigation and inquiry, I am well satisfied that they are good and sufficient sureties for the amount in the foregoing contract.

R. L. PHILLIPS,
Postmaster at Washington, Ark.

THE SCHEDULE OF DEPARTURES AND ARRIVALS.

Leave Washington every Tuesday, Thursday, and Saturday, at 6 a. m.;
Arrive at Clarksville next day by 6 p. m.
Leave Clarksville every Tuesday, Thursday, and Saturday, at 6 a. m.;
Arrive at Washington next day by 6 p. m.

Affidavits of witnesses taken before the undersigned notary public for the county of Hempstead and State of Arkansas, in the matter of the claim of Capt. William Moss, of the county and State aforesaid, against the Government of the United States, now pending before the Committee on Private Claims of the House of Representatives of Congress.

MATTHEW MOSS, a witness for the petitioner, William Moss, being duly sworn, stated as follows:

My name is Matthew Moss. I reside in Hempstead County, Arkansas, and have since the year 1819. I am in the seventy-fifth year of my age. I am the brother of the petitioner, who is my senior by nearly four years.

I have a personal knowledge of the fact that the petitioner, William Moss, was a mail contractor on a route between Washington, in Hempstead County, Arkansas, and Clarksville, in Red River County, Texas, beginning about the year 1854, for four years, terminating in the year 1858. When he first put the line in operation he carried the mail in two-horse stages or hacks; I mean in stages or hacks drawn by two horses. Some time after he began carrying the mails on that line he increased the grade of service from hacks and stages drawn by two horses to those drawn by four horses. My understanding at the time was that the mails were so heavy on the route that they could not be transported in two-horse stages. I remember being present once and seeing Robert L. Phillips, then the postmaster at Washington, Ark., weigh the mail which was to go out on one trip of the stage, and which, I understood, was not more than an average, and it weighed eleven hundred and odd pounds. From my knowledge of the country over which this mail had to be transported, and the weight of the mails, as I was informed at the time, I feel no hesitation in expressing the opinion that it could not have been carried by two-horse conveyances. My recollection is that the trips were six times a week.

I further know that at the time this contract was in operation that it had to carry all the mail matter for northeastern Texas, being the only through line into that State from Arkansas.

I knew Hezekiah W. Smith, who was the stable-keeper in Washington, Ark., for the contractor during all the time of the service. He has been dead for a number of years. I also knew James Satterfield, who was a driver on the line during the entire contract, or nearly so, who is also dead. Robert L. Phillips, who was then the postmaster at Washington, Ark., has lately removed from this State to the State of Texas.

I have no interest in this matter, except that which I would naturally feel in the welfare of my brother, and in wishing him well in his business affairs.

Further affiant saith not.

MATTHEW MOSS.

RICHARD BOOKER, a citizen of Hempstead County, Arkansas, being duly sworn, made the following statement under oath:

My name is Richard Booker. I reside in Washington, Hempstead County, Arkansas, and have since the year 1856. I am fifty-six years old nearly. I have known Capt. William Moss, of Washington, Hempstead County, ever since the year 1856. I am a blacksmith by trade. In the month of January, 1856, I removed to Washington, Ark., and was immediately employed in a blacksmith shop owned by H. W. Smith and C. M. Herrey. The horses belonging to Captain Moss's stage line on the end running into Washington were all shod at this stable. I know that at that time he was running four horses in his stages that came into Washington, and continued to do so as long as his contract lasted. I do not know that he run four horses over all the line, but such was my information at the time. James Satterfield drove the stage during all the time Captain Moss run it after I came here. My information is that he is dead and has been for several years. I have no interest whatever in this claim.

Further affiant saith not.

RICHARD BOOKER.

Capt. WILLIAM MOSS, the claimant and petitioner, being duly sworn, states:

My name is William Moss. I am in the seventy-eighth year of my age. I have lived in Hempstead County, Arkansas, since the year 1818, December. I am the claimant in this case. I put the mail contract between Washington, Ark., and Clarksville, Tex., in operation in the year 1854. My original contract was to transport the mails in two-horse hacks or stages. My recollection is that this was the first time that service was put upon this route.

In a short time after I had stocked and equipped the line the weight of the mails began to increase, and before the end of one year had increased so much that I could not haul them with two horses, and was compelled to increase my stock. I had six relays of horses on the line, making the number in use when I began, twelve. When I increased my stock I had to double from end to end of my line, which caused me to have to buy and subsist twelve more horses, or equal to what was six teams, in addition to the number with which I began. My recollection is now that I ran this increased service for three years, possibly a little more or less.

It was imperatively necessary to add this additional stock to do the work.

The contract was advertised by the Postmaster-General and let for service in two-horse hacks or stages, and I took it with that expectation and put it in operation with first-class stock, harness, and stages. Without boasting I can safely say I do not believe a better stage line was ever equipped in the Southern country. I know there was never a better in this State. My stock was first class of this country, and with this it was impossible to do the work. I yielded to the demands of necessity in putting on the additional stock and to keep my contract with the government.

In consequence of the increase in the number of horses along the line, my drivers all demanded an increase of wages, and I had to increase their pay, which ran from \$12 to \$15 per month up to \$25 and \$30 per month. Leaving out the cost of stages, my expenses were increased exactly, or nearly so, 100 per centum.

It is now nearly twenty-four years since my contract expired; nearly all the persons who had an intimate personal knowledge of the facts have died. Robert L. Phillips, then the postmaster, has removed to a distant State (Texas) several hundred miles from me. I am old and very poor and have not the means to go to him or procure his evidence further. Disease has laid its heavy hand upon me and I now shuffle along an invalid, worn out in body, broken in spirit and impaired in mental vigor, tremulously petitioning our mighty government that even justice may be done me—not bounty or charity, but justice, even-handed, square, and righteous justice against which nothing can be said except lapse of time. Time has come and gone with me, and if the small but equitably just demand due me should be delayed for many moons the relief if it ever comes will fall upon my coffin, in which I shall be laid without it by the charity of my friends.

In this, my last and final statement in this matter, I here now repeat and reaffirm all antecedent statements made by me in respect of my claim, and which are now, I suppose, in the hands of the committee.

Further affiant says not.

WILLIAM MOSS.

STATE OF ARKANSAS,
Hempstead County.

I, Robert B. Williams, a notary public in and for the county and State aforesaid, duly commissioned and qualified, do certify that the foregoing affidavits of Matthew Moss, Richard Booker, and William Moss were severally reduced to writing and subscribed by them in my presence. That each of said witnesses was sworn by me that his statement should be the truth, the whole and nothing but the truth.

And I further certify that each of said witnesses resides in the county of Hempstead and State of Arkansas.

In witness whereof I have hereunto set my hand and affixed my seal as such notary public this the 4th day of March, 1882.

[SEAL.]

R. B. WILLIAMS,
Notary Public.

WILLIAM MOSS, claimant against the United States for extra compensation as mail contractor on Route No. —, from Washington, Ark., to Clarksville, Tex., in brief states and says:

That on the 1st day of July, A. D. 1854, he became the contractor on said route, tri-weekly, in two-horse coaches, for the sum of \$6,300 per annum; that he entered on the service in good faith, and gave his bond as required, in the sum of \$10,000; that at the time he done so all the mails concentrating at Washington, Ark., were horse mails, with the exception of the route from Washington, Ark., to Little Rock, Ark., in two-horse coaches, three times a week, and that at that time the mail he had to carry would average 200 to 250 pounds; that about one year after his contract, the contractors on Route No. —, from Washington to Little Rock, succeeded in getting their service raised in consideration and representation of the increased weight of mail matter to be transported to a daily four-horse stage. He further states that in addition to the increased service on the Little Rock route, there was established, as the files in the Post-Office Department will show, a line from Gaines Landing, on the Mississippi River, to Washington, Ark. (the point his route commenced), in four-horse daily stages; and also another route from Shreveport, La., to Washington, in two-horse coaches three times a week, and that with all this accumulation of service his remained as it was.

Washington was the depot of all this additional mail matter, and supplying, with small exceptions, all Northeastern Texas, and hence he applied to have his grade of service increased to four-horse service, but from some cause it was never done. He had determined to abandon his contract, as the fines which would be imposed for leaving mail matter which he could not carry would impoverish him, but in response to a letter from the Postmaster-General on the subject (but which he has now mislaid) as well as under the directions of Arthur Hays, who was then mail agent of this portion of Arkansas, he was advised not to do so, as there could be no doubt that Congress would give him relief, as had been done in the case of the Little Rock route and other cases.

The agent Hays was present more than once when the mail matter was weighed which he had to transport, as also in the presence of R. L. Phillips, the postmaster at Washington, Ark.; and the weights were from 900 to 1,100 pounds each mail. And hence he was compelled to increase the service on his route to transport the same, and which he did, by putting on three horses for a short time, and as they could not do

the service, he then put on four-horse service, and this was done by the advice and request of Mr. Hays, the mail agent; that with his *two*-horse service, twelve was all that was necessary, but to increase this grade of service twelve more was necessary, and that he so run in good faith for within a fraction of *three* years.

This increased service commenced in the very early part of 1855 and continued till the 30th June, 1858, when his contract expired.

He claims in justice and equity that he is entitled to 100 per cent. per annum on his original bid of \$6,300 for the three years for his increased grade of service on said route as before stated. And even that, owing to his loss of stock and consequent increased expenses from two to four horses, would not compensate him for the service he performed. The service performed, the weight of the mail matter he transported, is shown by the affidavits hereto attached, and to which he respectfully refers. He further states that Arthur Hays is now dead, or his affidavit could be forwarded.

STATE OF ARKANSAS,
Hempstead County:

Before the undersigned, clerk of the circuit court in and for the county and State aforesaid, personally came William Moss, to me personally well known, who, being duly sworn, states on oath that the above and foregoing three and one-half pages is a true copy of the original petition prepared by his counsel, and which was properly verified by his affiant and forwarded to Washington, D. C., to be presented to Congress with a bill for his relief; and he further states that all the averments, statements, and allegations in said petition are true without qualification; that he is informed that said original petition has been lost or mislaid, so that the same cannot now be produced, and this copy is presented as a substitute for said original petition.

WILLIAM MOSS.

Sworn to and subscribed before me this 21st day of February, A. D. 1876.

In witness whereof I have hereunto set my hand the seal of said court at my office the date above written.

[SEAL.]

THO. H. SIMMS, *Clerk.*

STATE OF ARKANSAS,
County of Hempstead:

In the matter of the claim of William Moss for extra pay as mail contractor, &c.

Before the undersigned, clerk of the circuit court in and for the county and State aforesaid, which is a court of record, having general jurisdiction, personally came Robert L. Phillips, to me well known, who, being duly sworn, made and subscribed the following affidavit, to wit:

My name is Robert L. Phillips; I reside in the town of Washington, Hempstead County, Arkansas, and have for within a fraction of forty years, during all which time I have known the claimant, William Moss, who was understood to be an old citizen when I came to the county. I am now nearly seventy-one years of age. I have filled numerous places of trust and responsibility in Hempstead County since I have resided there. I was for many years a justice of the peace; I was for about 15 or 16 years county treasurer of the county, having been displaced from that office by force of the reconstruction acts of Congress in the year 1867. About the month of October, A. D. 1838, I received the appointment of postmaster at Washington, Arkansas, and continued to hold the office till about the month of January, in the year 1849, when I resigned the place, and remained out of the office till about the month of April or May, in the year 1852, when I was reappointed, and remained in office after that appointment until the beginning of the war of rebellion, and after the close of that war I was reappointed, and continued in the same office till removed, about the month of September, in the year 1868.

I well remember that, in the year 1854, the claimant, William Moss, became the contractor to carry the mails on route No. 2, from Washington, Arkansas, to Clarksville, Texas, in two-horse stages.* This line was then but a continuation of the stage line from Little Rock, Arkansas, to the town of Washington, over which the mails were carried in two-horse coaches three times a week. At the time said Moss took the contract as aforesaid the said line from Little Rock to Washington was the only route except that of said Moss, terminating at Washington, on which the mails were carried in stages. On these the trips were made three times a week, making regular connections at Washington.

Some time about the beginning of the year 1855, the Postmaster-General increased the grade of service on the route from Little Rock to Washington from three times a week to six times, and from a two-horse to a four-horse line of stages, giving the contractors, Messrs. Hauger & Ayliff, an increase of pay accordingly. About the same

time a new post route was established from Gaines's Landing on the Mississippi River to Washington, running 180 miles from east to west, almost entirely across the State, and a contract let to carry the mails over said route in four-horse stages six times a week or daily, I am not now certain which. And about the same time the service on the route from Washington, Ark., to Shreveport, in Louisiana, was increased from a trip once a week on horseback to three times a week in two-horse stages, which was afterwards increased from a tri-weekly to a daily, or six times a week service in four-horse stages. This increase of service on all these routes was made, as I then understood, to hasten the delivery of mail matter in Eastern and North-eastern Texas, which before that had been going by way of New Orleans, making a long circuit, which was cut off by these direct lines across the country, and under this plan the mail agents along the lines of transit of mail matter caused the mail matter for the portions of Texas aforesaid to be sent over these lines.

The consequence was that the line of said Moss from Washington to Clarksville, which was then the only route connecting with Texas through Arkansas, became the neck of a funnel, as it were, and all the Texas matter which came over all these lines had to find its way out through his route. The consequence was his two-horse service was wholly unequal to the work, and could not carry the accumulation of mail matter from my office. He was reported to the department and fined for not doing so. In consequence of this he became very much dissatisfied and spoke srongly of abandoning his contract. I seriously remonstrated against his doing so, and assured him that I believed the department would grant him relief and pay him if he would increase his facilities so as to meet the demands of the service.

At our joint solicitations Mr. Arthur Hays, who was then mail agent for a district which included Arkansas, came to Washington especially to examine into these complaints, which he did, and in my presence urged Moss to increase his line to a four-horse stage service by which he could carry all the mails, and that (he Hays) would place the matter properly before the Postmaster-General, and urge him to allow the extra compensation to which he would be entitled for such increase of service. I think Moss first tried to do the work with three horses, and finding he could not do it so, put on four horses and kept them on till his contract expired, during which time he carried the mails promptly, faithfully, and on time, unless sometimes prevented by the accident of overflows and impassable waters.

I remember distinctly that mail-agent Hays weighed the mails in my office, on more than one occasion, which had to go out on Moss's stage. I remember once it weighed over 1,100 pounds. This was not an extraordinary mail either. I think I could safely say the average was near 1,000 pounds per trip. I have a distinct recollection of times when as many as fourteen sacks of mail matter would be ready for a trip, and these packed as long as a bundle could be put into them. I know that Moss's expenses must have been largely increased by the increase of service. It required twice the number of horses and harness, twice the capital to invest in them, twice the forage; indeed, I might say twice an increase in everything save alone in his vehicles and stage-drivers, and I would feel safe in assuming that he ought reasonably to have had an increase of from seventy-five to one hundred per centum upon his original contract price for this additional service. My understanding is, that Arthur Hays, the mail agent I have alluded to above, has been dead for many years; indeed, I think he died not a great while after he was here looking after the mail matters as I have stated above. I also remember the fact that Moss made complaint to the Postmaster-General, and received a letter from him (I think it was Hon. A. V. Brown) giving encouragement to him to put on the increased grade of service. I cannot now remember the language or contents of the letter beyond the general idea that Moss had the sanction or approval of the department for doing as he did do.

At the time Moss had this contract my recollection now is that there was no mail route went into Texas from the east or north above or west of his route, but that the whole burden of the mail matter for one-half the State of Texas, or nearly so, went over this line. I think Moss's contract expired the 30th of June, 1858. It is scarcely necessary for me to say that I have no interest, direct or remote, in this matter, and the success or defeat of Moss's claim is all one to me so far as gain or reward or the hope thereof is concerned.

R. L. PHILLIPS.

Sworn to and subscribed before me, Thomas H. Simms, clerk of the circuit court for the county of Hempstead and State of Arkansas.

In witness whereof I have hereunto set my hand as such clerk and affixed my official seal at office in Washington this 22d day of February, A. D. 1876.

[SEAL.]

THO. H. SIMMS, *Clerk.*

LOUISA F. STONE.

AUGUST 2, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CHAPMAN, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 6889.]

The Committee on War Claims, to whom was referred the bill (H. R. 3325) for the relief of Mrs. Louisa F. Stone, report as follows:

That the bill is for the relief of Mrs. Louisa F. Stone, widow and administratrix of Dr. Thomas J. Stone, deceased, late of Leonardtown, Md.

The proof shows that Dr. Stone was appointed surgeon to a detachment of the Fifth United States Cavalry stationed at Leonardtown, Md., in the months of October and November of 1863, to serve until a regular surgeon of the Army arrived.

This claim was first introduced into Congress in the year 1873, and was submitted to the Surgeon-General of the Army for his approval, supported only by the evidence of citizens of the place, together with a letter from Lieut. John Mix, Fifth United States Cavalry, commanding detachment of troops at Leonardtown, requesting Dr. Stone to render his bill for services for the months of October and November.

The Surgeon-General considered the claim and returned it to Congress with the following indorsement:

Respectfully returned to Hon. William M. Merrick, M. C. No record is found in this office of the services within stated, or any claim therefor; and although it is not improbable that something is equitably due the claimant, yet there is not such evidence as would justify any action by an executive bureau. The case seems a proper one for the exercise of legislative discretion. The Lieut. John Mix, whose name appears, is probably the same with Capt. John Mix, now of the Second United States Cavalry; and he may have some recollection of the facts. The Adjutant-General will be able to give his present address.

J. K. BARNES,
Surgeon-General U. S. Army.

SURGEON-GENERAL'S OFFICE, *January 13, 1873.*

In accordance with the suggestion of the Surgeon-General application was made to the Adjutant-General for the address of Lieutenant Mix, and his reply was that Lieutenant Mix was dead. Since the reply of the Surgeon-General there has been filed with the papers the affidavit of Thaddeus K. Preuss, the provost marshal of Leonardtown during the years 1862 and 1863, who states that Dr. Thomas J. Stone did attend the soldiers of that post and supply them with medicine until the arrival of a regular surgeon.

Dr. Stone submitted his account for services, stated at \$170, to Lieutenant Mix, who approved it, and sent it to the principal surgeon at Point Lookout, Md., for his approval. The surgeon at Point Lookout approved the same, and sent it to the Surgeon-General at Norfolk, Va. No record is found of the claim after it left the office of the surgeon at Point Lookout.

Your committee are of opinion that the sum of \$170 is justly due the estate of Dr. Stone, and report herewith a substitute for the bill (H. R. 3325) and recommend its passage.

C

J. C. CAMP.

AUGUST 3, 1882.—Laid on the table and ordered to be printed.

Mr. HUBBELL, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 6058.]

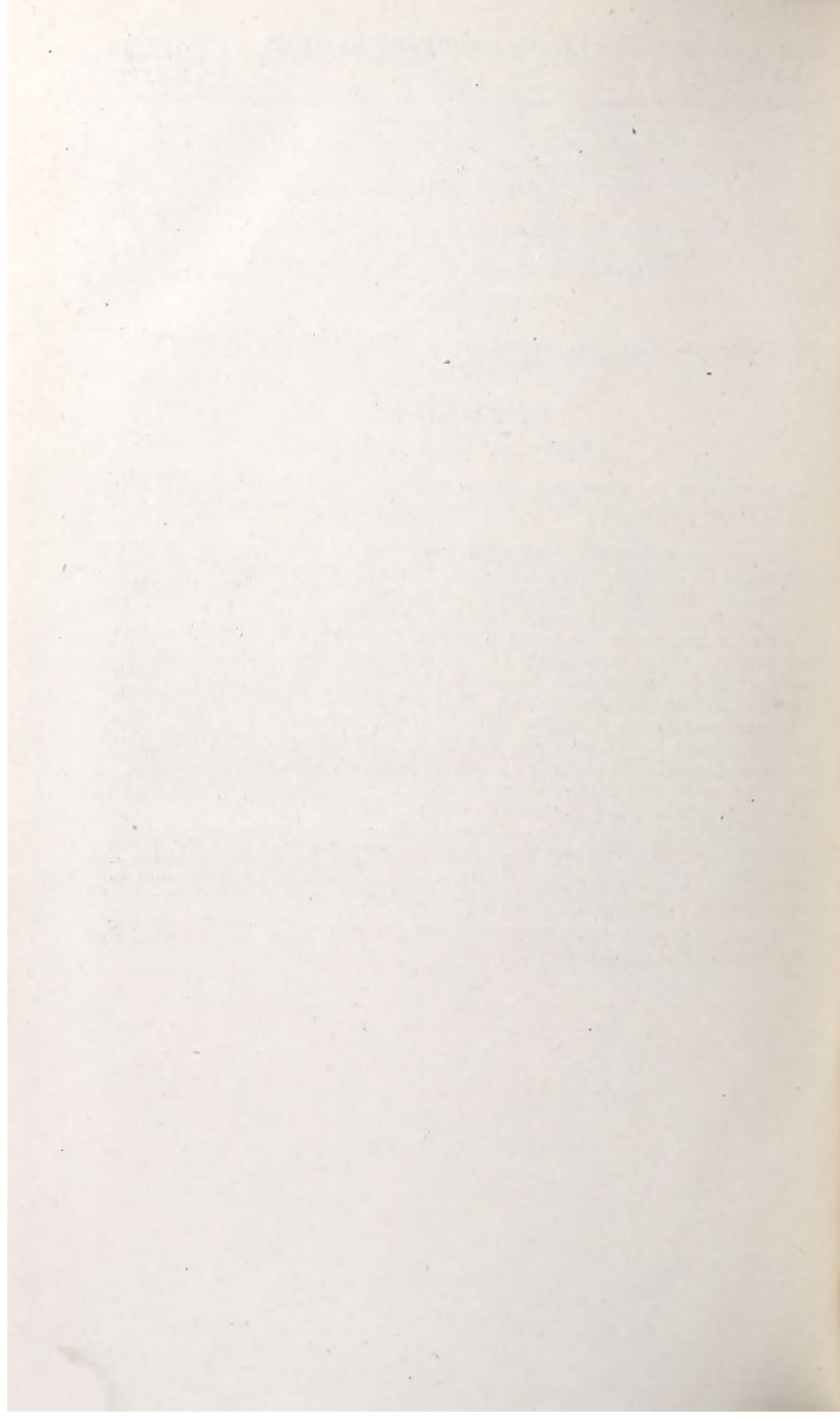
The Committee on Ways and Means, to whom was referred the bill (H. R. 6058) for the relief of I. C. Camp, submit the following report:

The accompanying bill directs the Secretary of the Treasury to pay \$3,000 to I. C. Camp, of North Carolina, "for moneys improperly collected of him by United States marshals." The initial "I" as printed in the name of the claimant, is a typographical error, and should be "J."

An examination of the records of the Treasury Department shows that John C. Camp was surety on the distillers bond of C. O. Green, upon which judgment was recovered in the western district of North Carolina, at the November term, 1873, for \$2,575.53, with interest on \$2,020.90, until paid, from November 3, 1873, and costs, and this judgment was paid in full and covered into the Treasury. The Commissioner of Internal Revenue, in a letter dated July 12, 1882, written in response to a letter from your committee requesting information as to the merits of the claim of John C. Camp, said:

So far as appears to this office there was a judgment regularly recovered on a distiller's bond on which Mr. Camp was a surety for taxes due the United States, and this judgment was collected, and there is no evidence before this office to show anything improper either in the recovery of the judgment or in its collection, and no reason appears for the granting of Congressional relief.

In view of these facts, your committee report back the bill with the recommendation that it do not pass.



NEWMAN & TATHAM.

AUGUST 3, 1882.—Laid on the table and ordered to be printed.

Mr. HUBBELL, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 6056.]

The Committee on Ways and Means, to whom was referred the bill H. R. 6056, submit the following report:

The bill accompanying this report proposes to refund to Messrs. Newman & Tatham, of Cherokee County, North Carolina, the value of two barrels of distilled spirits, which were seized and sold by the revenue officers for violation of law, and the proceeds of which sale were paid into the Treasury. The facts of the seizure and sale are thus set forth in a letter addressed to your committee by the Commissioner of Internal Revenue, dated June 25, 1882:

It appears that July 27, 1880, Collector Clark, Atlanta, Ga., seized from P. B. Tatham and William Newman one horse, one mule, one wagon and harness, and two casks of corn whisky, purporting to have been distilled and tax paid by P. B. Tatham, sixth district of North Carolina. The casks were numbered 20 and 21, respectively. Cask No. 20 was marked and branded to contain 48 gallons of 100° proof, and No. 21 to contain 46 gallons of 100° proof. The first mentioned was found, upon inspection, to contain only 46 gallons, the proof of which was 96°, and No. 21 only 42½ gallons, proof 93.4°. Other irregularities in the manner of stamping and marking were found, and therefore the collector considered the spirits subject to forfeiture under sections 3289 and 3299 Revised Statutes. He released the horse and wagon upon payment of expenses. The spirits were sold under section 346 Revised Statutes, September 13, 1880, for \$120. The expenses were \$92.10. The net proceeds deposited were \$27.90. Collector Clark, in a letter dated April 11, 1881, writes as follows: "From the various statements of the case made before me, and the circumstances attending the seizure, * * * * it was quite probable that the packages seized had been tampered with *in transitu* from North Carolina to Georgia." In view of the facts herein and previously stated in regard to this matter, I conclude that the parties have no just claim against the government.

From this statement of facts by the revenue officers, your committee report back the bill with the recommendation that it do not pass.

P. B. TATHAM.

AUGUST 3, 1882.—Laid on the table and ordered to be printed.

Mr. HUBBELL, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 6057.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 6057) for the relief of P. B. Tatham, submit the following report:

P. B. Tatham, of Cherokee County, North Carolina, the party named in the accompanying bill, claims relief on the ground that he lost by leakage and by robbery from his distillery 396 gallons of spirituous liquors, upon which the revenue officers exacted tax. The Commissioner of Internal Revenue, in a letter addressed to your committee under date of June 28, 1882, says the facts in this case, as reported to him by the revenue officers in charge of the claimant's distillery, do not justify Congressional relief. In the letter alluded to the Commissioner of Internal Revenue says:

There is no evidence before this office that the spirits were destroyed without fraud, collusion, or negligence on the part of the owner thereof. The inference is that the spirits were removed and entered into consumption without payment of the tax.

In view of this statement from the Commissioner of Internal Revenue, your committee report back the bill with the recommendation that it do not pass.

S. D. PLEMMONS.

AUGUST 3, 1882.—Laid on the table and ordered to be printed.

Mr. HUBBELL, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 6059.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 6059) for the relief of S. D. Plemmons, submit the following report:

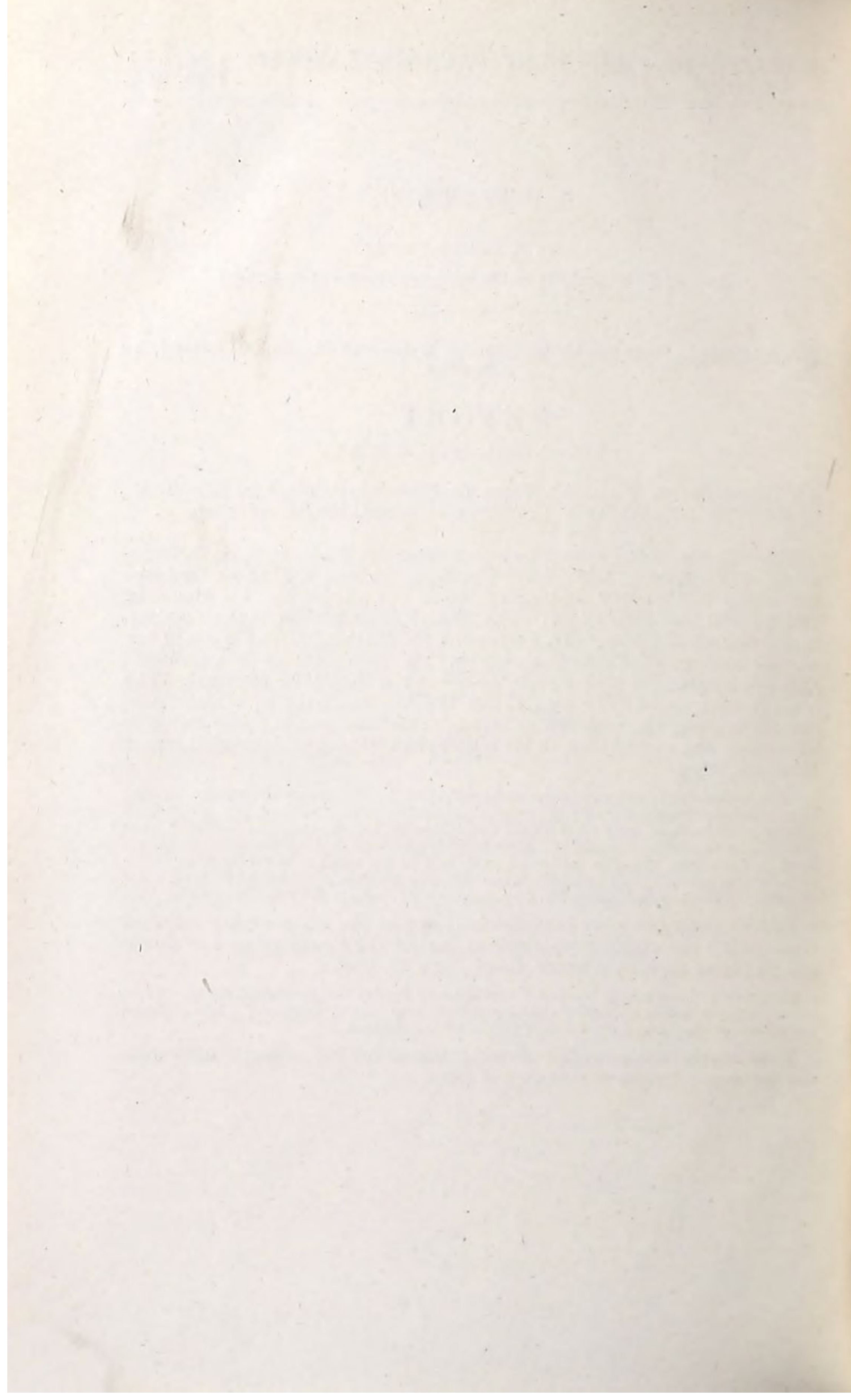
This bill provides for the repayment from the Treasury to S. D. Plemmons, of Madison County, North Carolina, the sum of \$118.80, for taxes laid upon 132 gallons of whisky, upon the allegation that the said whisky was lost by leakage. The official records show that an assessment was made against Mr. Plemmons for March, 1877, of \$119.70 tax on 133 gallons of distilled spirits, which were entered in warehouse and not removed within a year, as the law at that time required. The barrels were found to be empty, but the tax was paid by stamps purchased to cover the quantity of spirits in the warehouse. The collector who made the assessment, in his report to the Commissioner of Internal Revenue, says:

I do not find that Plemmons ever made claim for the abatement of this tax, or that he at the time demurred to its payment. It is my opinion that had the spirits been suffering by leakage the owner would have become cognizant of the fact and have taken steps to protect his property from further and total loss. I consider the assessment to have been properly made and paid, and in the absence of evidence as to the cause of the loss of the spirits, other than the mere statement that it had "leaked out entirely," I see no reason why Mr. Plemmons should obtain the relief he seeks.

In forwarding to your committee a copy of the letter of the collector from which the above paragraph is quoted the Commissioner of Internal Revenue says, in a letter dated June 28, 1882:

The facts as known to this office do not seem to justify Congressional relief. There is no evidence before this office that the spirits were lost or destroyed without fraud, collusion, or negligence on the part of the owner thereof.

Your committee, after full investigation of the bill, report it back with the recommendation that it do not pass.



TEXAS AND PACIFIC RAILROAD LAND GRANT.

AUGUST 3, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. REED, from the Committee on the Judiciary, submitted the following

R E P O R T :

[To accompany H. Res. 286.]

The Committee on the Judiciary, to whom was referred H. Res. 286, submit the following report:

The Texas and Pacific Railroad Company was incorporated under the name of the Texas Pacific by the act of March 3, 1871. By section 1 of that act the route was defined and described as follows:

From a point at or near Marshall, county of Harrison, State of Texas; thence by the most direct and eligible route, to be determined by said company, near the thirty-second parallel of north latitude, to a point at or near El Paso; thence by the most direct and eligible route, to be selected by said company, through New Mexico and Arizona, to a point on the Rio Colorado at or near the southeastern boundary of the State of California; thence by the most direct and eligible route to San Diego, Cal., to Ship's Channel, in the bay of San Diego, in the State of California, pursuing in the location thereof, as near as may be, the thirty-second parallel of north latitude.

Section 23 provides—

That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions, as were granted to said Southern Pacific Railroad Company of California by the act of July 27, 1866.

Section 9 provides for a land grant which, as described by the Secretary of the Interior, Ex. Doc. 144, Forty-seventh Congress, first session, is—

A grant of every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of the line as adopted by the company through the Territories of the United States, and ten alternate sections per mile on each side of the line in California. Exception is made of lands sold, reserved, or otherwise disposed of, and lands to which a pre-emption or homestead claim may have attached at the time the line of the road is definitely fixed.

Indemnity is provided for lands thus lost to the grant out of alternate odd-numbered sections not more than ten miles from the limits of the sections granted. Provision is also made for indemnity for lands lost by reason of the near approach of the line of the road to the boundary of Mexico, and also for mineral lands excluded from the grant out of odd-numbered sections nearest the line of the road.

The same authority estimates the quantity of land embraced in the grant at 14,309,760 acres.

The Texas and Pacific Company was required to commence the con-

struction of its road at San Diego and at Marshall simultaneously, and to complete it in ten years. The act of May 2, 1872 (17 Statutes, 59), extended the time of completion to May 2, 1882, which time at the date of this report has expired.

The Secretary of the Interior further reports that—

The length of the entire line is estimated at 1,483 miles. Proof of the construction of 181 miles of this road in Texas has been furnished, but no evidence of construction beyond that has reached this office.

The committee are informed that the construction has proceeded much farther in the State of Texas than the last figures indicate, but the exact number of miles is not material, as none of it is west of El Paso, on the Texas line.

To this should be added the fact that at the hearing before the committee it seemed that whatever railroad had been built from San Diego eastward had been built by another company.

This statement shows that the Texas and Pacific have never completed any part of the route for which the land grant was made to them, and have never earned or claimed to have earned any part of the land. It is also understood that they do not propose to build any such road or to attempt to do it. In fact, they have agreed not to do so, and have attempted to transfer to another company all their title to and rights in the land grant in question. So far from intending to earn the lands, they have renounced them. They have abandoned the undertaking so far as this part of their route is concerned, and it is understood that they have agreed not to build, in accordance with the charter, west of El Paso.

While the ten years which were allowed for the building of the Texas and Pacific were passing another corporation, the Southern Pacific, started out of San Francisco to meet the Texas and Pacific at the Colorado River. When it reached the Colorado it found that the Texas and Pacific had not built in the Territories, and was asking Congress for a guarantee of the interest on its bonds, in addition to the grant, to enable it to go on.

The Southern Pacific thereupon began to build to El Paso, claiming that no guaranty was needed, and no land grant even, and without guaranty or land grant it occupied substantially the route on which the act of March, 1871, contemplated that the Texas and Pacific would build. After the completion of the Southern Pacific to El Paso, it entered into an agreement with the Texas and Pacific, which was not produced before the committee. It was admitted, however, that the latter company had released its title to the land grant to the Southern Pacific, and that that corporation was now the claimant of the lands.

If the Texas and Pacific still claimed the lands, the strongest argument which it could have urged would have been found in the seventeenth section of the act of March, 1871. The language of that section, while not identical with that contained in the eighth and ninth sections of the charter of the Northern Pacific, nevertheless resembles it, and under that section an argument might have been advanced that the only right which the United States had reserved for themselves was to complete the road. Had the facts shown that the Texas and Pacific had begun its work in good faith, had already expended large sums of money in an effort to build the road, was in the act of building it as rapidly as was possible, that there was no pretense that it could be finished earlier, than it was being finished, there might have arisen a very serious question as to the power and duty of Congress in the premises. But the Texas and

Pacific, one party to the grant or contract, having made no effort to carry it out, having renounced it, both informally and formally, both by acts and by writing, there can be no question of the right of the United States, the other party, to resume possession of the proposed grant, unless the Southern Pacific have acquired some rights by virtue of some deed of release.

On behalf of the Southern Pacific it is urged that the words used in the ninth section, "and assigns," in the phrase "there is hereby granted to the said Texas and Pacific Railroad Company, its successors *and assigns*, every alternate section," &c., authorize the latter company to transfer the lands in question in bulk to any other person who would receive it charged with the same trust; that the Southern Pacific, having received the lands at a time when they had completed a railroad which was the same, or nearly the same, in location as that described in the act of March, 1871, received the lands discharged from the trust by reason of its fulfillment. In the opinion of the committee the words "and assigns" do not, in this case, have this meaning. We think these words describe the nature of the estate, are words of limitation, and do not constitute the grantee an agent of the United States to select another corporation which has performed similar work and make it the beneficiary of the grant. Nor do they constitute the grantee an agent to bestow a gratuity. It is further claimed on behalf of the Southern Pacific that the sections—notably section 4—authorizing consolidations give the authority needed for the transfer. Whether these sections would, under any state of facts, confer such power need not now be determined, for no facts have been laid before us which show any consolidation whereby the Texas and Pacific has absorbed the Southern Pacific. So far as this transaction is concerned the process would seem to have been reversed.

The consolidations contemplated by sections 4, 5, and 6 were those whereby other companies were to become part and parcel of the Texas and Pacific. If the Southern Pacific had become part and parcel of the Texas and Pacific, it could not be the claimant here.

It is further urged on behalf of the Southern Pacific that, inasmuch as that company have done what the United States offered to give the granted land to the Texas and Pacific if it would do it, equity requires that the land grant should be transferred.

To this, as a request for a gratuity, no objection can be made. That would rest in the sound judgment of Congress. But this request is put upon the ground of a claim founded upon equity and good conscience. The reply seems simple. Congress would never have been justified in offering the lands had it not deemed the offer necessary to secure the road. Now that events have demonstrated its non necessity, the reason for offering it has entirely failed. The Southern Pacific was not induced by it to build. It built from other motives; not at the request of the United States, nor even for the benefit of the United States. It happened for its own purposes to build the road the United States wanted, and prevented the company from building it which the United States had authorized. It is difficult to see how this state of facts lays the United States under any obligation, either in equity or good conscience.

To these considerations may be added the fact that action on the part of the United States is necessary to enable the United States to restore this land to the public domain. Whatever legal rights parties have can be ascertained better after an act of forfeiture than before, and none of them will be lost.

No question of policy can arise here such as would arise if this were an enterprise not yet completed, but in the process of completion, which such an act would interrupt. Whatever road is to be built has been built.

The committee therefore recommend the passage of the accompanying resolution.

JOINT RESOLUTION to declare the forfeiture of lands granted the Texas Pacific Railroad Company under act of March third, eighteen hundred and seventy-one, and acts amendatory thereof and supplemental thereto.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all lands granted to the Texas Pacific Railroad Company under the act of Congress entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March third, eighteen hundred and seventy-one, and acts amendatory thereof or supplemental thereto, be, and they are hereby, declared forfeited, and that the whole of said lands be restored to the public domain and made subject to sale and settlement under existing laws of the United States.

Mr. KNOTT, from the Committee on the Judiciary, submitted the following as the

VIEWS OF THE MINORITY:

While concurring in the recommendation of the committee, the undersigned are unwilling to be committed, even by the remotest implication, to the doctrine that the United States might be deprived of its right to enforce a forfeiture of the lands granted to this or any other railroad company for breach of the conditions upon which such grant was made simply because Congress may have reserved the power "to adopt such measures as it may deem necessary and proper to secure the speedy completion of the road" in aid of which the lands were granted, and because the company, notwithstanding the breach, may be proceeding with its work.

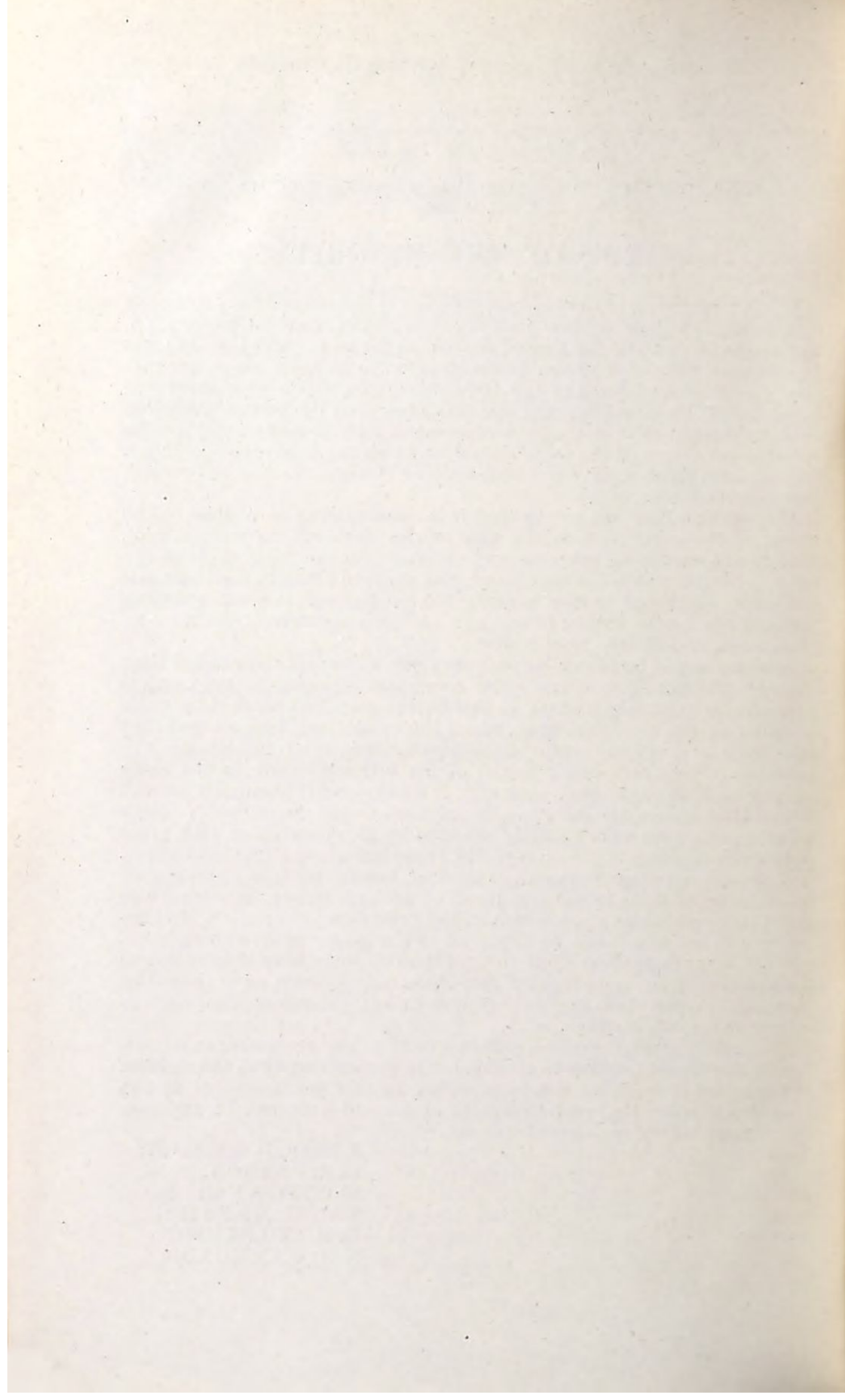
The undersigned are aware that it is substantially so argued in the report of the committee in the case of the Northern Pacific Railroad, as they are unable to perceive any difference in the legal effect of the language upon which the conclusion was made to hinge in that instance and that employed in the seventeenth section of the act granting lands to the Texas Pacific Company; but they dissented from the doctrine then, and dissent from it now.

Nothing could be better settled or more universally conceded than that the grantor of an estate upon conditions subsequent may, unless his right be expressly waived or lost by his own laches, re-enter upon a breach of *any* condition upon which the estate may depend, and that upon such re-entry the estate of the grantor becomes void *ab initio*, the person who re-enters being seized of his original estate in the same manner as if he had never conveyed it away; and it is equally as well settled that laches are never to be imputed to the government. Both of these principles were recently asserted by this committee with great clearness and force in the case of the Ontonagon and Brulé land grant.

If, therefore, the government, as grantor, has the right, without regard to the lapse of time, to reinvest itself of such an estate for a breach of *any* of the conditions upon which it had previously granted it, it is impossible to see how it can be deprived of the power to do so simply because it has reserved to itself the right to do something in addition to the exercise of the mere right of forfeiture. A question as to the policy of insisting upon such forfeiture is one thing; the naked legal *right* to enforce it is quite another.

The undersigned, therefore, cannot assent to any reasoning or intimation in the report tending to establish the proposition that the right of absolute forfeiture does not exist either in this grant or that to the Northern Pacific Railroad Company in case of a breach of any condition upon which such grant was made.

J. PROCTOR KNOTT.
L. E. PAYSON.
R. W. TOWNSHEND.
VAN H. MANNING.
D. B. CULBERSON.
N. J. HAMMOND.



DUTY ON MANUFACTURES OF TIN.

AUGUST 3, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. ERRETT, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 2103.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 2103) entitled "An act in relation to the duties on manufactures of tin and for other purposes," having had the same under consideration, submit the following report:

The act of June 30, 1864, entitled "An act to create duties on imports," &c., contained the following provision (see 13 Stat. at L., p. 204):

On tin plates, and iron galvanized or coated with any metal by electric batteries or otherwise, two cents and a half a pound.

Under the stimulus of this provision several factories for the manufacture of tin plate were started in this country and put into operation at a large cost to their owners, the machinery and methods of manufacture being complex in their character, the manufacturers trusting to the manifest and plain interpretation of the above provision as contained in the published Statutes at Large.

But the new industry, thus begun at great expense to the capitalists who had engaged in it, had barely got started when the manufacturers discovered that tin plate was being admitted at an ad valorem duty of 25 per cent. under a ruling of the Treasury Department. Mr. Fessenden, then Secretary of the Treasury, having been written to on the subject, explained this proceeding, as follows:

It would appear that an error of punctuation had been made by some one, most probably by the clerk who engrossed that part of the act. If the comma which is inserted after the word "plates" be omitted, and a comma placed after the word "iron," the true sense will be had; which is unquestionably that tin plates as well as the iron must be galvanized or coated with any metal by electric batteries or otherwise, in order to bring them within the provision.

Thus, upon a mere *assumption* of a mistake in punctuation, of which there is and was no proof whatever, the protective purpose of the act of 1864 was set aside and this new American industry brought to a sudden stand-still.

Your committee have no doubt that the interpretation of the Secretary in this case was wrong, and logically insupportable. But it stood as law until 1875, when an effort was made in Congress to remedy the wrong done by it. In the act passed February 8, 1875 (18 Stat. at L., part 3, p. 308), it was provided as follows:

On tin in plates or sheets, and on terne or tigger's tin, one and one-tenth cents a pound.

This obviated the plea as to error in punctuation, but the rate was put entirely too low. The manufacturers claimed that the old rate of duty, $2\frac{1}{2}$ cents a pound, should be restored, but they were not heeded. At the original rate, $2\frac{1}{2}$ cents a pound, the duty was about 45 per cent. ad valorem; but at 1 cent a pound it is only about 20 per cent. ad valorem, and it thus operates more injuriously than the original misconstruction of the act of 1864, which necessitated a duty of 25 per cent. ad valorem.

The manufacturers, under this new legislation, again tried to put their works in operation; but the rate was so low that they were again compelled to succumb, and their large and costly establishments are now, and for years have been, practically idle. They ask that the old rate of $2\frac{1}{2}$ cents per pound should be restored, as they cannot compete with the foreign material at a less rate.

In seventeen years 3,002,386,900 pounds of tin plates, valued at \$172,444,949, have been imported. If the act of 1864 had been construed according to its manifest purport, a bulk equivalent to these vast importations would have been made in this country, and 30,000 to 40,000 workmen have found employment therein.

The accompanying bill proposes to restore the duty imposed by the act of 1864 in language not subject to misinterpretation, and with an amendment inserting after the word "iron," in the fifth line, the words *or steel or partly iron and steel*, so as to cover all probable contingencies. As so amended, the committee recommend the passage of the bill.



AMERICAN SHIP-BUILDING AND SHIP-OWNING INTERESTS.

AUGUST 3, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. CANDLER, from the Committee on Commerce, submitted the following

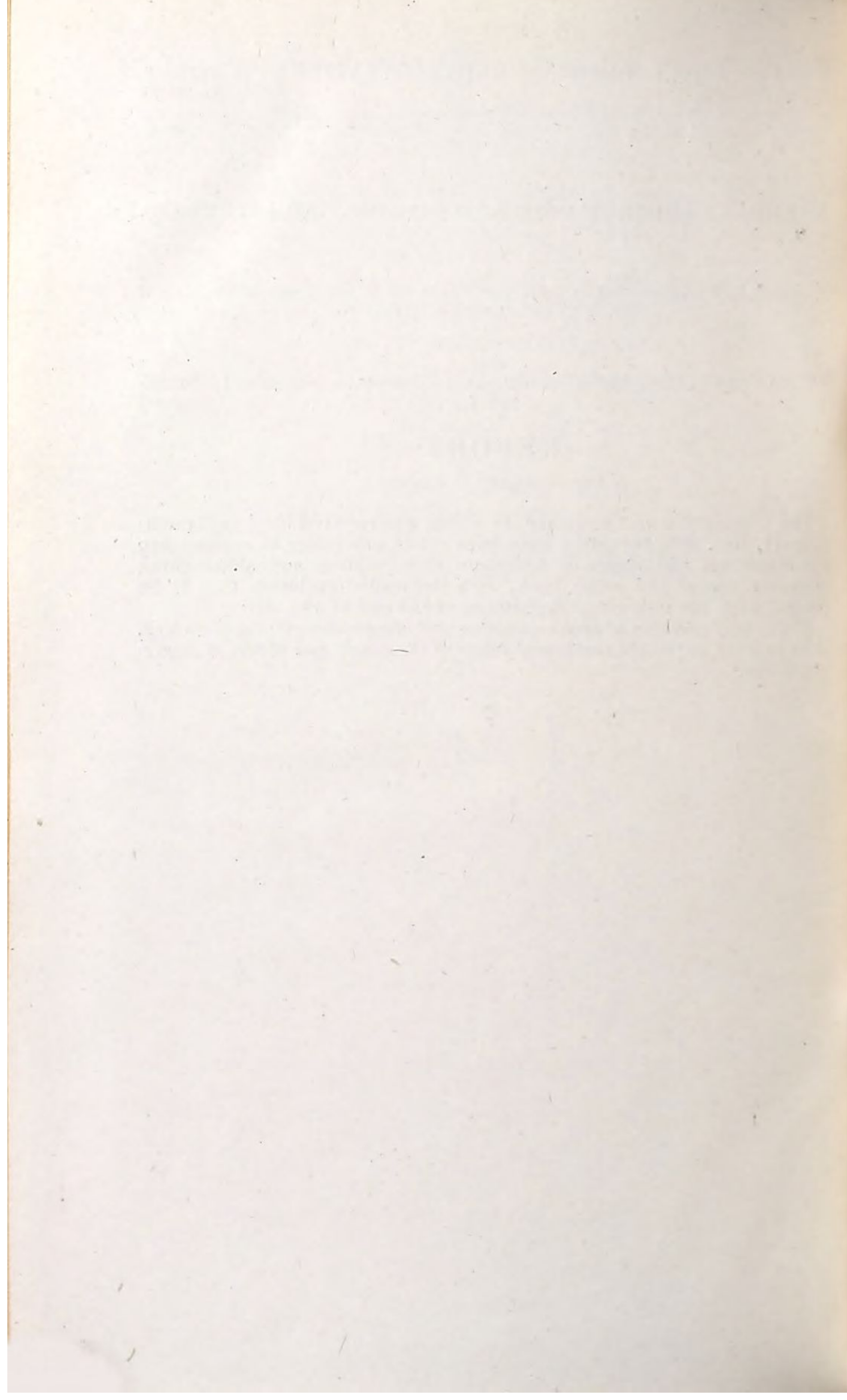
REPORT:

[To accompany H. Res. 266.]

The Committee on Commerce, to whom was referred the joint resolution (H. Res. 266) providing for a joint select committee to inquire into the condition and wants of American ship-building and ship-owning interests, report the same back, with the recommendation that it be passed with the following amendment at the end of the bill:

The actual expenses of such committee, including compensation of a clerk, shall be paid out of the contingent funds of the Senate and House of Representatives.





TREATY OF 1819 BETWEEN THE UNITED STATES AND SPAIN.

AUGUST 5, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. WILSON, from the Committee on Foreign Affairs, submitted the following

REPORT:

The Committee on Foreign Affairs, to whom was referred H. R. 1969, the object of which was to provide for the complete execution of the ninth article of the treaty of 1819 between the United States and Spain, having had the same under consideration, as well as the accompanying letter of the Secretary of State, addressed to the Hon. C. G. Williams, the chairman of this committee, dated April 11, 1882, are of the opinion that the said bill should not pass.

They therefore report the accompanying resolution as a substitute for said bill, and recommend that it do pass.

It will be observed that the Secretary of State, in the letter referred to, makes the following request and suggestions:

In closing, I take leave to express the earnest wish of this department that Congress may find time to make some positive expression of its wishes. I also take leave to indicate some ways in which this may be done:

I. Congress may be of opinion that the Government of Spain has no just claim upon the Government of the United States in respect of this deferred interest. In that case I hope it will be willing to express its opinion by a positive resolution to that effect which shall terminate this controversy.

II. Congress may be of opinion that there is a just claim. In that event I presume it will make the requisite appropriation for extinguishing the claim.

III. Congress may be in doubt whether the claim should or should not be allowed, and in that case I suggest that it be again referred to the Attorney-General for his opinion, and it may then be determined whether the claim should be referred to the Court of Claims for decision.

The committee being of opinion that they have not before them the information necessary to enable them to arrive at a just conclusion in respect of the first and second suggestions of the Secretary of State, recommend substantially the Secretary's third suggestion, as furnishing the only method by which the opinion of the Attorney-General can be obtained.

The committee would advise that direct application should be made to the Attorney-General for his opinion upon the questions involved, but for the fact that in an unbroken line of precedents it has been held that it is not competent for the Attorney-General to express his opinion as to questions pending before Congress. (See opinions of the Attorney-General, volume 14, pp. 17 and 177, and the cases there referred to.)

The following is the resolution, the passage of which we recommend:

Whereas a bill has been referred to, and is now pending before, the Committee on Foreign Affairs, entitled "A bill to provide for the com-

plete execution of the ninth article of the treaty of 1819, between the United States and Spain ;" therefore

Resolved, That the President be, and he is hereby, requested to inform the House of Representatives, if not incompatible with the public interest, whether in his opinion the ninth article of the treaty of 1819 has been fully executed according to its true intent and meaning, and according to the principles of international law applicable thereto, and also whether, in his opinion, any further legislation is necessary in relation thereto.

C

C. E. CARMEN.

AUGUST 5, 1882.—Laid on the table and ordered to be printed.

Mr. PEELLE, from the Committee on the Post-Office and Post-Roads,
submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition for the relief of C. E. Carmen, postmaster at Lyons, Ohio, having examined the same, find that the loss of postage-stamps set forth in said petition can be adjusted by the Postmaster-General, under the general law passed this session, and your committee therefore report back the accompanying petition, and recommend that said petition lie on the table and that leave be granted to withdraw same.

○

FEES OF REGISTERS AND RECEIVERS OF LAND OFFICES.

AUGUST 5, 1882.—Ordered to be printed.

Mr. STRAIT, from the Committee on Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 835.]

The Committee on Public Lands, to whom was referred the bill (H. R. No. 835) regulating fees allowed to registers and receivers of land offices, beg leave to report the same back and recommend its passage.

Formerly the registers and receivers had only to reduce the testimony offered in contested cases to writing and forward it to the Commissioner of the General Land Office for his decision, accompanied by an informal recommendation as to the merits of the case.

The rules of practice of the General Land Office, approved December 20, 1880, required the registers and receivers, in addition to the above duties in such cases, to enter all objections made, exceptions taken, and prayers offered, to entertain and determine all motions for continuance—the taking of depositions to be read at the trial, issuing the commissions for taking the same, in conformity to the specific rules of the department.

Upon the trial of all cases the registers and receivers are personally required to see that all the facts within the knowledge of the witnesses requisite to a correct conclusion of the same be developed in compliance with specific rules of the department as to the status of the land involved, nature, extent, and value of all improvements, when and by whom made, date of settlement, and steps taken to make and secure the claim, and to pass judicially upon all of the same.

The effect of these rules is to construct of the registers and receivers a court of record, and require of these officers the duties of judges and clerks without providing any additional compensation for the additional duties and responsibilities.

Exhibits of the occupied lands are necessary for the purpose of levying the taxes by the State or Territorial officers, and cannot practically be obtained from any other source.

Lists and plats of the occupied and unoccupied lands are valuable to prospectors and settlers, as they greatly cheapen the expenses and reduce the liability of error in making their selections of land for entry.

The registers and receivers are not required by law or rule to supply either the exhibits or plats, and the effects of the law as now construed by the General Land Office, which requires these officers to account for these fees in determining their maximum, is to encumber the local land offices, on the one hand, with the county assessors for the purpose of levying the taxes, and on the other it deprives the settler of the benefits of the plats.

This labor is wholly outside of the legitimate duties of the local land offices, and the amount stated in the bill as compensation therefor is intended to be the first cost of producing these exhibits and plats, which the public are anxious to obtain and willing to pay for.

If the law or rules required this class of work to be done free of any charge, there could be little else attended to in the offices, and it is clearly impracticable to give the public free access to the records for the purpose of making these said exhibits and plats.

The following extract is taken from Senate Report No. 245, second session Forty-sixth Congress, relating to this subject:

In his annual report for the fiscal year ending June 30, 1878, the Commissioner of the General Land Office makes the following recommendation (pages 114, 115):

"Prior to the last fiscal year the joint fees allowed registers and receivers for reducing testimony to writing in establishing pre-emption, homestead, and mineral rights were not required to be accounted for by the receiver of public moneys. On July 9, 1877, this office, after careful consideration, decided that, under the law as it now stands, these fees should be accounted for as other fees and commissions. * * * The services for which these moneys are received are over and above the ordinary duties of registers and receivers. The performance thereof involves personal labor, and frequently requires clerical assistance to be employed by the officers for the purpose. Under said instruction registers and receivers employed the necessary clerical force, and paid therefor out of the fees authorized to be received for reducing testimony to writing.

"In July, 1877, an order was issued by the Commissioner of the General Land Office directing registers and receivers to report monthly thereafter the amount of fees received from said service, but no order to pay over the same until February, 1879, when an order was issued requiring the payment of all fees received for such service subsequent to July 1, 1877, in all cases when by including these fees the maximum compensation was exceeded.

"The Commissioner of the General Land Office evidently regards the literal interpretation he feels compelled to give the law as a hardship. - And the moneys are to be viewed in the nature of expenses incident to the prosecution of the claims, rather than fees. We regard it as a hardship to compel the district officers to charge up the same against their maximum compensation, and recommend legislation to relieve them therefrom."

The object of the present bill is to make the law conform to the construction given to the act of March 21, 1864, from its passage to July 1, 1877. And the committee recommend its passage.

UNLAWFUL OCCUPATION OF THE PUBLIC LANDS.

AUGUST 7, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. T. M. RICE, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 3560.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 3560) to prevent the unlawful occupation of the public lands, have had the same under consideration, and report the same back to the House, with the following amendments, viz:

1. Insert in the third line, after the word "the" and before the word "occupation," the word "appropriation."

2. In the sixth and seventh lines, strike out the words "the pre-emption or homestead laws," and insert in lieu thereof the words "any law of the United States."

3. In the eighth line insert the word "appropriated" before the word "inclosed."

4. In the eighteenth and nineteenth lines strike out the words "the homestead and pre-emption laws," and insert in lieu thereof the words "any law of the United States."

5. Add to the first section the proviso: "*Provided*, That this act shall not apply to school selections or lands taken in good faith under any grant of the United States to a State."

6. Strike out the second section of the bill.

This legislation is necessary for the following reasons:

In the State of California, and in others of the States and Territories, many ranchers or herders have settled on the public lands without claim or pretense, or title or possessory right, and have inclosed large tracts of the same with fences. Such lands, if vacant and unoccupied, would be eagerly sought for homestead and pre-emption purposes. But the fact of their occupation, though unlawful, and though in legal contemplation they are vacant and subject to homestead and pre-emption entry, deters the settlers from making entry thereon.

The Supreme Court of the United States in the case of *Atherton vs. Fowler* (6 Otto, 513), and the subsequent cases of *Hosmer vs. Wallace* (7 Otto, 575), and *Trenouth vs. San Francisco* (10 Otto, 251), has held that no right of pre-emption can be established by a settlement and improvement on a tract of public land which is in the possession of one who has inclosed, settled upon, and improved it.

In *Hosmer vs. Wallace*, the court says:

To create a right of pre-emption, there must be settlement, inhabitation, and improvement by the pre-emptor, conditions which cannot be met when the land is in the occupation of another. * * * Under the pre-emption laws, as held in *Atherton vs. Fowler*, the right to make a settlement is to be exercised on unsettled land; the right to make improvements is to be exercised on unimproved land; and the right to erect a dwelling house is to be exercised on vacant land. None of these things can be done on land when it is occupied and used by others.

In *Trenouth vs. San Francisco* the court says:

The right of pre-emption, under the laws of the United States, cannot be acquired by intrusion and trespass upon lands in the actual possession of others.

From these quotations, it is apparent that the Supreme Court intended to deny the right to pre-empt when there was *actual* possession in another, without regard to the character of the possession, whether lawful or not.

And so the supreme court of California understands those decisions, as will be seen from their language in the case of *Davis vs. Scott*:

As the land was in the *actual* possession and occupation of the plaintiff at the time defendant attempted to locate a pre-emption claim thereon, it was not, therefore, subject to pre-emption.

The operation of these decisions is to permit the unlawful occupant to remain in possession. If the homesteader or pre-emptor attempts to locate on the lands, he is sued as a trespasser by the occupant, under the "possessory act" of California. If he defend under his homestead or pre-emption claim, he is met with the rejoinder that as the lands were in the actual possession of another, his homestead or pre-emption claim is void. Thus he gets no standing in court to test the rights of the original trespasser. He can only enforce his claim by a contest and protracted litigation, which few settlers can afford.

It is believed that this bill affords an adequate, summary, and easily enforced remedy, and the passage of the bill so amended is recommended by your committee.

The bill with proposed amendments is as follows:

IN THE HOUSE OF REPRESENTATIVES, *January 30, 1882.*

A BILL to prevent the unlawful occupation of the public lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the appropriation, occupation, or inclosure of any tract of the surveyed or unsurveyed public lands in larger quantity than authorized by law shall not prevent the entry thereon by any one duly qualified and intending in good faith to acquire title under any law of the United States; but where such tract has been inclosed, appropriated, or is occupied for the purpose of acquiring title thereto under any of the laws of the United States, the occupation shall be held valid for such lesser quantity as the occupant is authorized by law to acquire title to: *Provided,* That the occupant, or several occupants, if more than one, shall, within ten days after written demand, designate the metes and bounds of such lesser quantity by well-defined marks. In case of neglect or refusal to do so, such occupant or occupants shall be deemed trespassers, and the whole tract may be entered on by persons duly qualified and intending in good faith to acquire title under any law of the United States; and such demand and neglect or refusal shall be held to bar a recovery in any action brought against any person so entering: *Provided,* That this act shall not apply to school selections or lands taken in good faith under any grant by the United States to a State.

ELLEN W. P. CARTER.

AUGUST 7, 1882.—Laid on the table and ordered to be printed.

Mr. SIMONTON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2690.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2690) granting arrears of pension to Ellen W. P. Carter, widow of Fomteroy A. Carter, having had the same under consideration, make the following report:

After due consideration of the matter, the committee report the bill back to the House with the request that it do not pass, the committee having adopted the rule not to grant arrears of pension; and there being no special reason in this case that we should depart from the rule already established, we therefore report it adversely.

MARGARET J. BIRD.

AUGUST 7, 1882.—Laid on the table and ordered to be printed.

Mr. SIMONTON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3104.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3104) granting a pension to Margaret J. Bird, having had the same under consideration, make the following report:

That the papers from the Pension Office disclose that the claimant was dead before the introduction of this bill, and her youngest child is now over twenty-one years of age. The committee therefore recommend that the bill do not pass.

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House documents

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